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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह असग संकलन के रूप में रखा जा सके ।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on the 13th December, 1988:—

BILL No. 127 OF 1988

A Bill further to amend the Income-tax Act, 1961, the Wealth-tax Act, 1957, the Gift-tax Act, 1958 and the Direct Tax Laws (Amendment) Act, 1987.

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and commencement.

1. (*1*) This Act may be called the Direct Tax Laws (Amendment) Act, 1988.

(*2*) Save as otherwise provided in this Act, sections 2 to 31 and 33 to 95 shall come into force on the 1st day of April, 1989.

CHAPTER II

AMENDMENTS TO THE INCOME-TAX ACT, 1961

Amendment of section 2.

43 of 1961.

2. In section 2 of the Income-tax Act, 1961 (hereafter in this Chapter referred to as the Income-tax Act),—

(*a*) in clause (*24*),—

4 of 1988.

(*i*) in sub-clause (*iia*) [as amended by section 3 of the Direct Tax Laws (Amendment) Act, 1987], for the words, brackets, letters and figures "or by a trust or institution of natio-

importance referred to in clause (*d*) of sub-section (*1*) of section 80F", the words, brackets, figures and letter "or by an association or institution referred to in clause (*21*) or clause (*23*), or by a fund or trust or institution referred to in sub-clause (*iv*) or sub-clause (*v*) of clause (*23C*), of section 10" shall be substituted;

(*ii*) after sub-clause (*iii*), the following sub-clauses shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1962, namely:—

"(*iiia*) any special allowance or benefit, other than perquisite included under sub-clause (*iii*), specifically granted to the assessee to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of profit;

(*iiib*) any allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at a place where he ordinarily resides or to compensate him for the increased cost of living;";

(*b*) in clause (*25*) [as substituted by clause (*k* of section 3 of the Direct Tax Laws (Amendment) Act, 1987], the words, brackets and figure "sub-section (*1*) of" shall be omitted and shall be deemed to have been omitted with effect from the 1st day of April, 1988; 4 of 1988.

(*c*) in clause (*37A*) [as amended by clause (*o*) of section 3 of the Direct Tax Laws (Amendment) Act, 1987],— 4 of 1988.

(*A*) in sub-clause (*i*), the words, figures and letter "or section 167A", wherever they occur, shall be omitted;

(*B*) in sub-clause (*ii*), the figures and letter ", 194E" shall be omitted and shall be deemed to have been omitted with effect from the 1st day of April, 1988.

Amendment of section 3.

3. In section 3 of the Income-tax Act [as substituted by section 4 of the Direct Tax Laws (Amendment) Act, 1987], in sub-section (*2*), after the proviso, the following provisos shall be inserted, namely:— 4 of 1988.

'Provided further that in the case of a business or profession newly set up, or a source of income newly coming into existence on or after the 1st day of April, 1987 but before the 1st day of April, 1988 and where the accounts in relation to such business or profession or source of income have not been made up to the 31st day of March, 1988, the "previous year" in relation to the assessment year commencing on the 1st day of April, 1989. shall be the period beginning with the date of setting up of the business or profession or, as the case may be, the date on which the source of income newly comes into existence and ending on the 31st day of March, 1989:

Provided also that where the assessee has adopted one or more periods as the "previous year" in relation to the assessment year commencing on the 1st day of April, 1988, for any source or sources of his income, in addition to the business or profession or source of income referred to in the second proviso, the previous year in relation to the assessment year commencing on the 1st day of April,

1989, shall be reckoned separately in the manner aforesaid in respect of each such source of income, and the longer or the longest of the periods so reckoned shall be the previous year in relation to the said assessment year.'.

Amendment of section 10.

4. In section 10 of the Income-tax Act,—

(*a*) after clause (*6B*), the following clause shall be inserted, namely:—

"(*6C*) any income arising to such foreign company, as the Central Government may, by notification in the Official Gazette, specify in this behalf, by way of fees for technical services received in pursuance of an agreement entered into with that Government for providing services in or outside India in projects connected with security of India;";

26 of 1988.

(*b*) in clause (*15*), after sub-clause (*iic*) [as inserted by section 4 of the Finance Act, 1988], the following sub-clause shall be inserted, namely:—

'(*iid*) interest on such bonds, as the Central Government may, by notification in the Official Gazette, specify, arising to—

(*a*) a non-resident Indian, being an individual owning the bonds; or

(*b*) any individual owning the bonds by virtue of being a nominee or survivor of the non-resident Indian; or

(*c*) any individual to whom the bonds have been gifted by the non-resident Indian:

Provided that the aforesaid bonds are purchased by a non-resident Indian in foreign exchange and the interest and principal received in respect of such bonds, whether on their maturity or otherwise, is not allowable to be taken out of India:

Provided further that where an individual, who is a non-resident Indian in any previous year in which the bonds are acquired, becomes a resident in India in any subsequent year, the provisions of this sub-clause shall continue to apply in relation to such individual:

Provided also that in a case where the bonds are encashed in a previous year prior to their maturity by an individual who is so entitled, the provisions of this sub-clause shall not apply to such individual in relation to the assessment year relevant to such previous year.

Explanation.—For the purposes of this sub-clause, the expression "non-resident Indian" shall have the meaning assigned to it in clause (*e*) of section 115C;';

(*c*) for clause (*21*) [as it stood immediately before its omission by clause (*k*) of section 6 of the Direct Tax Laws (Amendment)

Act, 1987], the following clause shall be substituted with effect from the 1st day of April, 1990, namely:— 4 of 1988.

'(*21*) any income of a scientific research association for the time being approved for the purpose of clause (*ii*) of sub-section (*1*) of section 35:

Provided that the scientific research association—

(*a*) applies its income, or accumulates it for application, wholly and exclusively to the objects for which it is established, and the provisions of sub-section (*2*) and sub-section (*3*) of section 11 shall apply in relation to such accumulation subject to the following modifications, namely:—

(*i*) in sub-section (*2*),—

(*1*) the words, brackets, letters and figure "referred to in clause (*a*) or clause (*b*) of sub-section (*1*) read with the *Explanation* to that sub-section" shall be omitted;

(*2*) for the words "to charitable or religious purposes", the words "for the purposes of scientific, research" shall be substituted;

(*3*) the reference to "Assessing Officer" in clause (*a*) thereof shall be construed as a reference to the "prescribed authority" referred to in clause (*ii*) of sub-section (*1*) of section 35;

(*ii*) in sub-section (*3*), in clause (*a*), for the words "charitable or religious purposes", the words "the purposes of scientific research" shall be substituted; and

(*b*) does not invest or deposit its funds (other than voluntary contributions received and maintained in the form of jewellery, furniture or any other article as the Board may, by notification in the Official Gazette, specify) for any period during the previous year otherwise than in any one or more of the forms or modes specified in sub-section (*5*) of section 11:

Provided further that nothing contained in this clause shall apply in relation to any income of the scientific research association, being profits and gains of business;';

(*d*) for clause (*23*) [as it stood immediately before its omission by clause (*k*) of section 6 of the Direct Tax Laws (Amendment) Act, 1987], the following clause shall be substituted with effect from the 1st day of April, 1990, namely:— 4 of 1988.

"(*23*) any income of an association or institution established in India which may be notified by the Central Government in the Official Gazette having regard to the fact that the association or institution has as its object the control, supervision, regulation or encouragement in India of the games of cricket, hockey, football, tennis or such other games or sports as the

Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that the association or institution shall make an application in the prescribed form and manner to the prescribed authority for the purpose of grant of the exemption, or continuance thereof, under this clause:

Provided further that the Central Government may, before notifying the association or institution under this clause call for such documents (including audited annual accounts) or information from the association or institution as it thinks necessary in order to satisfy itself about the genuineness of the activities of the association or institution and that Government may also make such inquiries as it may deem necessary in this behalf:

Provided also that the association or institution,—

(*a*) applies its income or accumulates it for application, wholly and exclusively to the objects for which it is established and the provisions of sub-section (*2*) and sub-section (*3*) of section 11 shall apply in relation to such accumulation subject to the following modifications, namely:—

(*i*) in sub-section (*2*),—

(*1*) the words, brackets, letters and figure "referred to in clause (*a*) or clause (*b*) of sub-section (*1*) read with the *Explanation* to that sub-section" shall be omitted;

(*2*) for the words "to charitable or religious purposes", the words "for the purposes of games or sports" shall be substituted;

(*3*) the reference to "Assessing Officer" in clause (*a*) thereof shall be construed as a reference to the "prescribed authority" referred to in the first proviso to this clause;

(*ii*) in sub-section (*3*), in clause (*a*), for the words "charitable or religious purposes", the words "the purposes of games or sports" shall be substituted; and

(b) does not invest or deposit its funds (other than voluntary contributions received and maintained in the form of jewellery, furniture or any other article as the Board may, by notification in the Official Gazette, specify) for any period during the previous year otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11; and

(c) does not distribute any part of its income in any manner to its members except as grants to any association or institution affiliated to it:

Provided also that the exemption under this clause shall not be denied in relation to any funds invested or deposited

before the 1st day of April, 1989 otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 if such funds do not continue to remain so invested or deposited after the 30th day of March, 1990:

Provided also that nothing contained in this clause shall apply in relation to any income of the association or institution, being profits and gains of business:

Provided also that any notification issued by the Central Government under this clause in relation to any association or institution shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years, (including an assessment year or years commencing before the date on which such notification is issued) as may be specified in the notification;";

(*e*) in clause (*23C*) [as it stood immediately before its amendment by section 6 of the Direct Tax Laws (Amendment) Act, 1987], for sub-clauses (*iv*) and (*v*), the following sub-clauses shall be substituted with effect from the 1st day of April, 1990, namely:— 4 of 1988.

"(*iv*) any other fund or institution established for charitable purposes which may be notified by the Central Government in the Official Gazette, having regard to the objects of the fund or institution and its importance throughout India or throughout any State or States; or

(*v*) any trust (including any other legal obligation) or institution wholly for public religious purposes or wholly for public religious and charitable purposes, which may be notified by the Central Government in the Official Gazette, having regard to the manner in which the affairs of the trust or institution are administered and supervised for ensuring that the income accruing thereto is properly applied for the objects thereof:

Provided that the fund or trust or institution referred to in sub-clause (*iv*) or sub-clause (*v*) shall make an application in the prescribed form and manner to the prescribed authority for the purpose of grant of the exemption, or continuance thereof, under sub-clause (*iv*) or sub-clause (*v*):

Provided further that the Central Government may, before notifying the fund or trust or institution under sub-clause (*iv*) or sub-clause (*v*), call for such documents (including audited annual accounts) or information from the fund or trust or institution as it thinks necessary in order to satisfy itself about the genuineness of the activities of the fund or trust or institution and that Government may also make such inquiries as it may deem necessary in this behalf:

Provided also that the fund or trust or institution referred to in sub-clause (*iv*) or sub-clause (*v*)—

(*a*) applies its income, or accumulates it for application, wholly and exclusively to the objects for which it is established; and

(*b*) does not invest or deposit its funds (other than voluntary contributions received and maintained in the form of jewellery, furniture or any other article as the Board may, by notification in the Official Gazette, specify) for any period during the previous year otherwise than in any one or more of the forms or modes specified in sub-section (*5*) of section 11:

Provided also that the exemption under sub-clause (*iv*) or sub-clause (*v*) shall not be denied in relation to any funds invested or deposited before the 1st day of April, 1989 otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 if such funds do not continue to remain so invested or deposited after the 30th day of March, 1990.

Provided also that nothing contained in sub-clause (*iv*) or sub-clause (*v*) shall apply in relation to any income of the fund or trust or institution, being profits and gains of business, unless the business is incidental to the attainment of its objectives and separate books of accounts are maintained by it in respect of such business:

Provided also that any notification issued by the Central Government under sub-clause (*iv*) or sub-clause (*v*) shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years (including an assessment year or years commencing before the date on which such notification is issued) as may be specified in the notification;";

(*f*) in clause (*23D*), the words ", including the condition that at least ninety per cent. of such income shall be distributed to the holders of its units every year," shall be omitted and shall be deemed to have been omitted with effect from the 1st day of April, 1988.

5. In section 11 of the Income-tax Act [as it stood immediately before its omission by section 7 of the Direct Tax Laws (Amendment) Act, 1987],— Amendment of section 11.

4 of 1988.

(*a*) in sub-section (*1*),—

(*i*) after clause (c) and before the *Explanation*, the following clause shall be inserted, namely:—

"(*d*) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution;";

(*ii*) in the *Explanation*, in clause (2),—

(*1*) the words, brackets and figure "or sub-section (*2*)" shall be omitted;

(*2*) the words ", whether fixed originally or on extension" shall be omitted;

(*b*) in sub-section (*5*),—

(*i*) in clause (*vii*), for the words and figures "Government company as defined in section 617 of the Companies Act, 1956", the words "public sector company" shall be substituted;

1 of 1956.

(*ii*) after clause (*xi*), the following clause shall be inserted, namely:—

"(*xii*) any other form or mode of investment or deposit as may be prescribed.".

Amendment of section 32A.

6. In section 32A of the Income-tax Act,—

(*a*) in sub-section (*1*),—

(*i*) for the words "Provided that", the following shall be substituted, namely:—

'Provided that in respect of a ship or an aircraft acquired or machinery or plant installed after the 31st day of March, 1988, this sub-section shall have effect as if for the words "twenty-five per cent.", the words "twenty per cent." had been substituted:

Provided further that';

(*ii*) the following *Explanation* shall be added at the end, namely:—

'*Explanation*.—For the purposes of this sub-section, "actual cost" means the actual cost of the ship, aircraft, machinery or plant to the assessee as reduced by that part of such cost which has been met out of the amount released to the assessee under sub-section (*6*) of section 32AB';

(*b*) in sub-section (*2*), after clause (*b*), the following proviso shall be inserted, namely:—

"Provided that nothing contained in clauses (*a*) and (*b*) shall apply in relation to,—

(*i*) a new ship or new aircraft acquired, or

(*ii*) any new machinery or plant installed,

after the 31st day of March, 1987 but before the 1st day of April, 1988;";

(c) in sub-section (*2C*), after the words, figures and letters "the 31st day of May, 1983", the words, figures and letters "but before the 1st day of April, 1987" shall be inserted;

(*d*) in sub-section (*4*), in clause (*ii*), in sub-clause (*a*), for the words "the proviso", the words "the second proviso" shall be substituted;

(*e*) in sub-section (5), in clause (*b*), for the words "the proviso", the words "the second proviso" shall be substituted;

(*f*) for sub-section (*8B*), the following sub-sections shall be substituted, namely:—

"(*8B*) Notwithstanding anything contained in sub-section (*8*) or any notification issued thereunder, the provisions of this section shall apply in respect of a ship or aircraft acquired or any machinery or plant installed after the 31st day of March, 1988 but before such date as the Central Government, if it considers necessary or expedient so to do, may, by notification in the Official Gazette, specify in this behalf.

(8C) Subject to the provisions of clause (*ii*) of sub-section (3), where a deduction has been allowed to an assessee under sub-section (*1*) in any assessment year, no deduction shall be allowed to the assessee under section 32AB in the said assessment year and in the four assessment years immediately succeeding such assessment year." .

Amendment of section 32AB.

7. In section 32AB of the Income-tax Act, for sub-section (*10*), the following sub-section shall be substituted, namely:—

"(*10*) Where a deduction has been allowed to an assessee under this section in any assessment year, no deduction shall be allowed to the assessee under sub-section (*1*) of section 32A in the said assessment year and in the four assessment years immediately succeeding such assessment year.".

Amendment of section 35.

8. In section 35 of the Income-tax Act [as it stood immediately before its omission by section 10 of the Direct Tax Laws (Amendment) Act, 1987] in sub-section (*1*),— 4 of 1988.

(*a*) in clause (*ii*), in the proviso, after the words "prescribed authority", the words "by notification in the Official Gazette" shall be inserted;

(*b*) in clause (*iii*), after the words "prescribed authority", the words "by notification in the Official Gazette" shall be inserted;

(c) the following provisos shall be inserted at the end, namely:—

"Provided that the scientific research association, university, college or other institution referred to in clause (*ii*) or clause (*iii*) shall make an application in the prescribed form and manner to the prescribed authority for the purpose of grant of approval, or continuance thereof, under clause (*ii*) or, as the case may be, clause (*iii*):

Provided further that the prescribed authority may, before granting approval under clause (*ii*) or clause (*iii*), call for such documents (including audited annual accounts) or information from the scientific research association, university, college or other institution as it thinks necessary in order to satisfy itself about the genuineness of the activities of the scientific research association, university, college or other institution and that authority may also make such inquiries as it may deem necessary in this behalf:

Provided also that any notification issued by the prescribed authority under clause (*ii*) or clause (*iii*) shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years (including an assessment year or years commencing before the date on which such notification is issued) as may be specified in the notification.".

Amendment of section 40.

9. In section 40 of the Income-tax Act, after clause (*b*) [as it stood immediately before its substitution by clause (*ii*) of section 13 of the Direct Tax Laws (Amendment) Act, 1987], the following clause shall be inserted, namely:— 4 of 1988.

'(*ba*) in the case of an association of persons or body of individuals (other than a company or a cooperative society or a society

registered under the Societies Registration Act, 1860 or under any law corresponding to that Act in force in any part of India), any payment of interest, salary, bonus, commission or remuneration, by whatever name called, made by such association or body to a member of such association or body. 21 of 1860.

Explanation 1.—Where interest is paid by an association or body to any member thereof who has also paid interest to the association or body, the amount of interest to be disallowed under this clause shall be limited to the amount by which the payment of interest by the association or body to the member exceeds the payment of interest by the member to the association or body.

Explanation 2.—Where an individual is a member of an association or body on behalf, or for the benefit of any other person (such member and the other person being hereinafter referred to as "member in a representative capacity" and "person so represented", respectively),—

(*i*) interest paid by the association or body to such individual or by such individual to the association or body otherwise than as member in a representative capacity, shall not be taken into account for the purposes of this clause;

(*ii*) interest paid by the association or body to such individual or by such individual to the association or body as member in a representative capacity and interest paid by the association or body to the person so represented or by the person so represented to the association or body, shall be taken into account for the purposes of this clause.

Explanation 3.—Where an individual is a member of an association or body otherwise than as member in a representative capacity, interest paid by the association or body to such individual shall not be taken into account for the purposes of this clause, if such interest is received by him on behalf, or for the benefit, of any other person.'.

Amendment of section 44AC.

10. In section 44AC of the Income-tax Act (as inserted by section 15 of the Finance Act, 1988), in sub-section (*1*), in clause (*a*), the following proviso shall be inserted, namely:— 26 of 1988.

"Provided that nothing contained in this clause shall apply to a buyer where the goods are not obtained by him by way of auction and where the sale price of such goods to be sold by the buyer is fixed by or under any State Act:".

Amendment of section 64.

11. In section 64 of the Income-tax Act, in sub-section (*1*) [as it stood immediately before its amendment by section 17 of the Direct Tax Laws (Amendment) Act, 1987],— 4 of 1988.

(*a*) in clauses (*v*) and (*vii*), the brackets and words "(not being a married daughter)" shall be omitted;

(*b*) for *Explanation 3*, the following *Explanation* shall be substituted, namely:—

'*Explanation* 3.—For the purposes of clauses (*iv*), (*v*) and (*vi*), where the assets transferred directly or indirectly by an

individual to his spouse or minor child or son's wife or son's minor child (hereinafter in this *Explanation* referred to as "the transferee") are invested by the transferee in any business, that part of the income arising out of the business to the transferee in any previous year, which bears the same proportion to the income of the transferee from the business, as the value of the assets aforesaid as on the 1st day of the previous year bears to the total investment in the business by the transferee as on the said day, shall be included in the total income of the individual in that previous year.'.

Insertion of new section 67A.

12. After section 67 of the Income-tax Act [as it stood immediately before its substitution by section 18 of the Direct Tax Laws (Amendment) Act, 1987], the following section shall be inserted, namely:—

4 of 1988.

Method of computing a member's share in the income of association of persons or body of individuals.

'67A. (*1*) In computing the total income of an assessee who is a member of an association of persons or a body of individuals wherein the shares of the members are determinate and known (other than a company or a cooperative society or a society registered under the Societies Registration Act, 1860 or under any law corresponding to that Act in force in any part of India), whether the net result of the computation of the total income of such association or body is a profit or a loss, his share (whether a net profit or net loss) shall be computed as follows, namely:—

21 of 1860.

(*a*) any interest, salary, bonus, commission or remuneration by whatever name called, paid to any member in respect of the previous year shall be deducted from the total income of the association or body and the balance ascertained and apportioned among the members in the proportions in which they are entitled to share in the income of the association or body;

(*b*) where the amount apportioned to a member under clause (*a*) is a profit, any interest, salary, bonus, commission or remuneration aforesaid paid to the member by the association or body in respect of the previous year shall be added to that amount, and the result shall be treated as the member's share in the income of the association or body;

(*c*) where the amount apportioned to a member under clause (*a*) is a loss, any interest, salary, bonus, commission or remuneration aforesaid paid to the member by the association or body in respect of the previous year shall be adjusted against that amount, and the result shall be treated as the member's share in the income of the association or body.

(*2*) The share of a member in the income or loss of the association or body, as computed under sub-section (*1*), shall, for the purposes of assessment, be apportioned under the various heads of income in the same manner in which the income or loss of the association or body has been determined under each head of income.

(*3*) Any interest paid by a member on capital borrowed by him for the purposes of investment in the association or body shall, in computing his share chargeable under the head "Profits and gains of business or profession" in respect of his share in the income of the association or body, be deducted from his share.

Explanation.—In this section, "paid" has the same meaning as is assigned to it in clause (*2*) of section 43.'.

Amendment of section 80C.

13. In section 80C of the Income-tax Act,—

(*a*) in sub-section (*2*),—

(*i*) in clause (*d*), the words "or ten thousand rupees, whichever is less" shall be omitted;

(*ii*) in clause (*h*), in sub-clause (*ii*), in item (c), in sub-item (*6*), after the words "public company", the words "or a public sector company or a University established by law or a college affiliated to such University" shall be inserted;

(*b*) in sub-section (*8*), after clause (c), the following clause shall be inserted, namely:—

'(*d*) "contribution" to any fund shall not include any sums in repayment of loan.'.

Amendment of section 80CC.

14. In section 80CC of the Income-tax Act, in sub-section (*3*), in clause (*a*), after sub-clause (*ii*), the following sub-clause shall be inserted, namely:—

"(*iii*) a hotel approved by the prescribed authority;".

Amendment of section 80HHC.

15. In section 80HHC of the Income-tax Act [as amended by section 24 of the Finance Act, 1988],— 26 of 1988.

(*a*) in sub-sections (*1*) and (*1A*), for the words "whole of the income", the word "profits" shall be substituted;

(*b*) in sub-section (*4*), for the words "net foreign exchange realisation as determined in accordance with the Import and Export Policy of the Government of India for the relevant period", the words "export turnover" shall be substituted;

(c) in sub-section (*4A*), in clause (*a*), for the word "income", the word "profits" shall be substituted;

(*d*) in the *Explanation*,—

(*i*) clause (*c*) shall be omitted;

(*ii*) clauses (*d*) and (*e*) shall be renumbered as clauses (*c*) and (*d*) respectively.

Insertion of new section 80 HHD. Deduction in respect of earnings in convertible foreign exchange.

16. After section 80HHC of the Income-tax Act, the following section shall be inserted, namely:—

'80HHD. (*1*) Where an assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of a hotel approved by the prescribed authority in this behalf or of a travel agent, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of a sum equal to the aggregate of—

(*a*) fifty per cent. of the profits derived by him from services provided to foreign tourists; and

(*b*) so much of the amount out of the remaining profits referred to in clause (*a*) as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account to be utilised for the purposes of the business of the assessee in the manner laid down in sub-section (*4*).

(*2*) This section applies only to services provided to foreign tourists the receipts in relation to which are received by the assessee in convertible foreign exchange.

(*3*) For the purposes of sub-section (*1*), profits derived from services provided to foreign tourists shall be,—

(*a*) in a case where the business carried on by the assessee consists exclusively of services provided to foreign tourists resulting in receipts in convertible foreign exchange, the profits of the business as computed under the head "Profits and gains of business or profession";

(*b*) in a case where the business carried on by the assessee does not consist exclusively of services provided to foreign tourists resulting in receipts in convertible foreign exchange, the amount which bears to the profits of the business (as computed under the head "Profits and gains of business or profession") the same proportion as the receipts in convertible foreign exchange bear to the total receipts of the business carried on by the assessee.

(*4*) The amount credited to the reserve account under clause (*b*) of sub-section (*1*), shall be utilised by the assessee before the expiry of a period of five years next following the previous year in which the amount was credited for the following purposes, namely:—

(*a*) construction of new hotels approved by the prescribed authority in this behalf or expansion of facilities in existing hotels already so approved;

(*b*) purchase of new cars and new coaches by travel agents;

(*c*) purchase of sports equipment for mountaineering, trekking, golf, river-rafting and other sports in or on water;

(*d*) construction of conference or convention centres;

(*e*) provision of such new facilities for the growth of Indian tourism as the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that where any of the activities referred to in clauses (*a*) to (*e*) would result in creation of any asset owned by the assessee outside India, such asset should be created only after obtaining prior approval of the prescribed authority.

(*5*) Where any amount credited to the reserve account under clause (*b*) of sub-section (*1*),—

(*a*) has been utilised for any purpose other than those referred to in sub-section (*4*), the amount so utilised; or

(*b*) has not been utilised in the manner specified in sub-section (*4*), the amount not so utilised,

shall be deemed to be the profits,—

(*i*) in a case referred to in clause (*a*), in the year in which the amount was so utilised; or

(*ii*) in a case referred to in clause (*b*), in the year immediately following the period of five years specified in sub-section (*4*),

and shall be charged to tax accordingly.

(*6*) The deduction under sub-section (*1*) shall not be admissible unless the assessee furnishes in the prescribed form, along with the return of income, the report of an accountant, as defined in the *Explanation* below sub-section (*2*) of section 288, certifying that the deduction has been correctly claimed on the basis of the amount of convertible foreign exchange received by the assessee for services provided by him to the foreign tourists.

Explanation.—For the purposes of this section,—

(*a*) "travel agent" means a travel agent or other person (not being an airline or a shipping company) who holds a valid licence granted by the Reserve Bank of India under section 32 of the Foreign Exchange Regulation Act, 1973; 46 of 1973.

(*b*) "convertible foreign exchange" shall have the meaning assigned to it in clause (*a*) *of the Explanation* to section 80HHC;

(c) "services provided to foreign tourists" shall not include services by way of sale in any shop owned or managed by the person who carries on the business of a hotel or of a travel agent.'.

Amendment of section 86.

17. In section 86 of the Income-tax Act [as it stood immediately before its substitution by section 29 of the Direct Tax Laws (Amendment) Act 1987], for clause (*v*), the following clause shall be substituted, 4 of 1988. namely:—

"(*v*) if the assessee is a member of an association of persons or a body of individuals (other than a company or a cooperative society or a society registered under the Societies Registration Act, 1860 or 21 of 1860. under any law corresponding to that Act in force in any part of India), his share in the income of the association or body computed in the manner provided in section 67A:

Provided that,—

(*a*) where the association or body is chargeable to tax on its total income at the maximum marginal rate or any higher rate, under any of the provisions of this Act, the share of a member computed as aforesaid shall not be included in his total income;

(*b*) in any other case, the share of a member computed as aforesaid shall form part of his total income:

Provided further that where no income-tax is chargeable on the total income of the association or body, the share of a member computed as aforesaid shall be chargeable to tax as part of his total income and nothing contained in this section shall apply to the case.".

Amendment of section 115A.

18. In section 115A of the Income-tax Act, in sub-section (*1*),—

(*i*) after clause (*aa*), the following clause shall be inserted, namely:—

"(*ab*) income received in respect of units, purchased in foreign currency, of a Mutual Fund specified under clause (*23D*) of section 10; or";

(*ii*) after clause (*ia*), the following clause shall be inserted, namely:—

"(*ib*) the amount of income-tax calculated on the income in respect of units referred to in clause (*ab*), if any, included in the total income, at the rate of twenty-five per cent.;";

(*iii*) in the *Explanation*,—

(*A*) clause (*b*) shall be omitted;

(*B*) clause (*bb*) shall be re-lettered as clause (*b*).

Amendment of section 115J.

19. In section 115J of the Income-tax Act, in sub-section (*1*),—

(*a*) in the opening portion, after the words "a company", the brackets and words "(other than a company engaged in the business of generation or distribution of electricity)" shall be inserted;

(*b*) in the *Explanation*,—

(*i*) in clause (*b*), after the words "any reserves", the brackets, words, figures and letters "(other than the reserves specified in section 80HHD)" shall be inserted;

(*ii*) in clause (*f*), for the word "applies,", the words "applies; or" shall be substituted;

(*iii*) after clause (*f*), the following clauses shall be inserted, namely:—

"(*g*) the amount withdrawn from the reserve account under section 80HHD, where it has been utilised for any purpose other than those referred to in sub-section (*4*) of that section; or

(*h*) the amount credited to the reserve account under section 80HHD, to the extent that amount has not been utilised within the period specified in sub-section (*4*) of that section,";

(*iv*) for the words "if any such amount is debited", the words, brackets and letters "if any amount referred to in clauses (*a*) to (*f*) is debited or, as the case may be, the amount referred to in clauses (*g*) and (*h*) is not credited" shall be substituted;

(*v*) in clause (*i*), after the words "from reserves", the brackets, words, figures and letters "(other than the reserves specified in section 80HHD)" shall be inserted;

(*vi*) clause (*iii*) shall be renumbered as clause (*iv*) and before clause (*iv*) as so renumbered, the following clause shall be inserted, namely:—

"(*iii*) the amounts [as arrived at after increasing the net profit by the amounts referred to in clauses (*a*) to (f)

and reducing the net profit by the amounts referred to in clauses (*i*) and (*ii*)] attributable to the business, the profits from which are eligible for deduction under section 80HHC or section 80HHD; so, however, that such amounts are computed in the manner specified in sub-section (*3*) of section 80HHC or sub-section (*3*) of section 80HHD, as the may be; or".

Amendment of section 139.

20. In section 139 of the Income-tax Act [as amended by section 42 of the Direct Tax Laws (Amendment) Act, 1987], 4 of 1988.—

(*a*) for sub-section (*4A*), the following sub-section shall be substituted, namely:—

"(*4A*) Every person in receipt of income derived from property held under trust or other legal obligation wholly for charitable or religious purposes or in part only for such purposes, or of income being voluntary contributions referred to in sub-clause (*iia*) of clause (*24*) of section 2, shall, if the total income in respect of which he is assessable as a representative assessee (the total income for this purpose being computed under this Act without giving effect to the provisions of sections 11 and 12) exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (*1*).";

(*b*) in sub-section (*10*), in the proviso, for clause (*d*), the following clause shall be substituted, namely:—

"(*d*) a return of a person who has claimed exemption of income from property held for charitable or religious purposes;".

Amendment of section 143.

21. In section 143 of the Income-tax Act [as substituted by section 48 of the Direct Tax Laws (Amendment) Act, 1987], 4 of 1988.—

(*a*) in sub-section (*1*), in clause (*a*), after the proviso, the following proviso shall be inserted, namely:—

"Provided further that an intimation for any tax or interest due under this clause shall not be sent after the expiry of two years from the end of the assessment year in which the income was first assessable.";

(*b*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

'(*1A*) (*a*) Where, in the case of any person, the total income, as a result of the adjustments made under the proviso to clause (*a*) of sub-section (*1*), exceeds the total income declared in the return by any amount, the Assessing Officer shall,—

(*i*) further increase the amount of tax payable under sub-section (*1*) by an additional income-tax calculated at the rate of twenty per cent. of the tax payable on such excess amount and specify the additional income-tax in the intimation to be sent under sub-clause (*i*) of clause (*a*) of sub-section (*1*);

(*ii*) where any refund is due under sub-section (*1*), reduce the amount of such refund by an amount equivalent to the additional income-tax calculated under sub-clause (*i*).

(*b*) Where as a result of an order under section 154 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264, the amount on which additional income-tax is payable under clause (*a*) has been increased or reduced, as the case may be, the additional income-tax shall be increased or reduced accordingly, and,—

(*i*) in a case where the additional income-tax is increased, the Assessing Officer shall serve on the assessee a notice of demand under section 156;

(*ii*) in a case where the additional income-tax is reduced, the excess amount paid, if any, shall be refunded.

Explanation.—For the purposes of this sub-section, "tax payable on such excess amount" means,—

(*i*) in any case where the amount of adjustments made under the proviso to clause (*a*) of sub-section (*1*) exceed the total income, the tax that would have been chargeable had the amount of the adjustments been the total income;

(*ii*) in any other case, the difference between the tax on the total income and the tax that would have been chargeable had such total income been reduced by the amount of adjustments.'.

Amendment of section 144A.

22. In section 144A of the Income-tax Act, in the *Explanation*, for the word "sub-section", the word "section" shall be substituted.

Amendment of section 147.

4 of 1988.

23. In section 147 of the Income-tax Act [as substituted by section 54 of the Direct Tax Laws (Amendment) Act, 1987], for the words ", for reasons to be recorded by him in writing, is of the opinion", the words "has reason to believe" shall be substituted.

Amendment of section 148.

4 of 1988.

24. Section 148 of the Income-tax Act [as substituted by section 54 of the Direct Tax Laws (Amendment) Act, 1987], shall be renumbered as sub-section (*1*) thereof and after sub-section (*1*) as so renumbered, the following sub-section shall be inserted, namely:—

"(*2*) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.".

Amendment of section 155.

25. In section 155 of the Income-tax Act, in sub-section (*4A*), in clause (*b*), for the words "the proviso", the words "the second proviso" shall be substituted.

Substitution of new sub-heading for sub-heading DD of Chapter XV.

4 of 1988.

26. In Chapter XV of the Income-tax Act, for the sub-heading "*DD.—Association of persons—special cases*" [as it stood immediately before its substitution by section 66 of the Direct Tax Laws (Amendment) Act, 1987], the sub-heading "*DD.—Association of persons and body of individuals*" shall be substituted.

Omission of section 167A.

27. Section 167A of the Income-tax Act [as it stood immediately before its substitution by section 66 of the Direct Tax Laws (Amendment) Act, 1987] shall be omitted. 4 of 1988.

Insertion of new section 167B.

28. After section 167A of the Income-tax Act (as omitted by section 27 of this Act), the following section shall be inserted, namely:—

Charge of tax where shares of members in association of persons or body of individuals unknown etc.

"167B. (*1*) Where the individual shares of the members of an association of persons or body of individuals (other than a company or a cooperative society or a society registered under the Societies Registration Act, 1860 or under any law corresponding to that Act in force in any part of India) in the whole or any part of the income of such association or body are indeterminate or unknown, tax shall be charged on the total income of the association or body at the maximum marginal rate: 21 of 1860.

Provided that, where the total income of any member of such association or body is chargeable to tax at a rate which is higher than the maximum marginal rate, tax shall be charged on the total income of the association or body at such higher rate.

(*2*) Where, in the case of an association of persons or body of individuals as aforesaid [not being a case falling under sub-section (*1*)],—

(*i*) the total income of any member thereof for the previous year (excluding his share from such association or body) exceeds the maximum amount which is not chargeable to tax in the case of that member under the Finance Act of the relevant year, tax shall be charged on the total income of the association or body at the maximum marginal rate;

(*ii*) any member or members thereof is or are chargeable to tax at a rate or rates which is or are higher than the maximum marginal rate, tax shall be charged on that portion or portions of the total income of the association or body which is or are relatable to the share or shares of such member or members at such higher rate or rates, as the case may be, and the balance of the total income of the association or body shall be taxed at the maximum marginal rate.

Explanation.—For the purposes of this section, the individual shares of the members of an association of persons or body of individuals in the whole or any part of the income of such association or body shall be deemed to be indeterminate or unknown if such shares (in relation to the whole or any part of such income) are indeterminate or unknown on the date of formation of such association or body or at any time thereafter.".

Amendment of section 190.

29. In section 190 of the Income-tax Act, in sub-section (*1*), after the words "payable by deduction", the words "or collection" shall be inserted and shall be deemed to have been inserted with effect from the 1st day of June, 1988.

Amendment of section 194A.

30. In section 194A of the Income-tax Act, in sub-section (3), after clause (*iii*), the following clause shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1988, namely:—

"(*iv*) to such income credited or paid by a firm to a partner of the firm;".

Omission of section 194E.

31. Section 194E of the Income-tax Act shall be omitted and shall be deemed to have been omitted with effect from the 1st day of April, 1988.

Substitution of new section for section 196A.

32. For section 196A of the Income-tax Act, the following section shall be substituted, namely:—

Tax not to be deducted from any income payable to unit-holders of Mutual Fund.

"196A. (*1*) Subject to the provisions of sub-section (2), no deduction of tax shall be made from any income payable in respect of units of a Mutual Fund, specified under clause (*23D*) of section 10, to its units-holders being persons other than foreign companies.

(2) Where any income referred to in sub-section (*1*) is payable to a unit-holder, being a foreign company, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of twenty-five per cent.".

Amendment of sections 198, 199, 200, 202, 203, 203A, 205 and 215.

33. In sections 198, 199, 200, 202, 203, sub-section (*1*) of section 203A, section 205 and sub-section (5) of section 215 of the Income-tax Act, for the words and figures "and section 195", the words, figures and letter ", section 195 and section 196A" shall be substituted.

Amendment of section 206C.

34. In section 206C of the Income-tax Act,—

(a) in sub-section (*1*), in the Table, in column (3) against item (*iii*), for the words "Ten per cent.", the words "Five per cent." shall be substituted and shall be deemed to have been substituted with effect from the 1st day of June, 1988;

(b) after sub-section (5), the following sub-section shall be inserted, namely:—

"(*5A*) Every person collecting tax in accordance with the provisions of this section shall prepare half yearly returns for the period ending on 30th September and 31st March in each financial year, and deliver or cause to be delivered to the prescribed income-tax authority such returns in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed.".

Amendment of section 209.

35. In section 209 of the Income-tax Act, in sub-section (*1*), in clause (*d*), for the words "deductible at source", the words "deductible or collectible at source" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of June, 1988.

Amendment of sections 222, 223, 224, 225, 226, 228 and 228A.

36. In sections 222, 223, 224, 225, 226, 228 and 228A of the Income-tax Act [as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987], for the words "Income-tax Officer", wherever they occur, the words "Assessing Officer" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1988. 4 of 1988.

Amendment of section 226.

37. In section 226 of the Income-tax Act (as amended by section 36 of this Act), in sub-sections (*2*), (*3*), (*4*) and (*5*), after the words "Assessing Officer", wherever they occur, the words "or Tax Recovery Officer" shall be inserted.

Amendment of section 234A.

38. In section 234A of the Income-tax Act [as inserted by section 94 of the Direct Tax Laws (Amendment) Act, 1987],— 4 of 1988.

(*a*) in sub-section (*1*),—

(*i*) for the words "the tax on the total income as determined on regular assessment as reduced by the advance tax, if any, paid and any tax deducted at source", the words, brackets and figures "the tax on the total income as determined under sub-section (*1*) of section 143 or on regular assessment as reduced by the advance tax, if any, paid and any tax deducted or collected at source" shall be substituted;

(*ii*) for *Explanation* 2, the following *Explanation* shall be substituted, namely:—

'*Explanation* 2.—In this sub-section, "tax on the total income as determined under sub-section (*1*) of section 143" shall not include the additional income-tax, if any, payable under section 143.';

(*iii*) after *Explanation* 3, the following *Explanation* shall be inserted, namely:—

'*Explanation* 4.—In this sub-section, "tax on the total income as determined under sub-section (*1*) of section 143 or on regular assessment" shall, for the purposes of computing the interest payable under section 140A, be deemed to be tax on total income as declared in the return.';

(*b*) in sub-section (*3*),—

(*i*) after the words and figures "under section 148 issued", the words, brackets and figures "after the determination of income under sub-section (*1*) of section 143 or" shall be inserted;

(*ii*) for the words "income determined on the basis of the earlier assessment aforesaid" the words, brackets and figures "income determined under sub-section (*1*) of section, 143 or on the basis of the earlier assessment aforesaid" shall be substituted;

(*iii*) the *Explanation* shall be omitted.

4 of 1988.

38. In section 234B of the Income-tax Act [as inserted by section 94 of the Direct Tax Laws (Amendment) Act, 1987],— Amendment of section 234B.

(*a*) in sub-section (*1*),—

(*i*) for the words "to the date of the regular assessment", the words, brackets and figures "to the date of determination of total income under sub-section (*1*) of section 143 or regular assessment" shall be substituted;

(*ii*) for *Explanation* 1, the following *Explanation* shall be substituted, namely:—

'*Explanation* 1.—In this section, "assessed tax" means,—

(*a*) for the purposes of computing the interest payable under section 140A, the tax on the total income as declared in the return referred to in that section;

(*b*) in any other case, the tax on the total income determined under sub-section (*1*) of section 143 or on regular assessment,

as reduced by the amount of tax deducted or collected at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income.';

(*iii*) for *Explanation* 3, the following *Explanation* shall be substituted, namely:—

'*Explanation* 3.—In *Explanation* 1 and in sub-section (*3*), "tax on the total income determined under sub-section (*1*) of section 143" shall not include the additional income-tax, if any, payable under section 143.';

(*b*) in sub-section (*2*), in the opening portion, after the words "date of", the words, brackets and figures "determination of total income under sub-section (*1*) of section 143 or" shall be inserted;

(*c*) in sub-setion (*3*),—

(*i*) for the words "the date of the regular assessment", the words, brackets and figures "the date of determination of total income under sub-section (*1*) of section 143 or regular assessment" shall be substituted;

(*ii*) for the words "income determined on the basis of the regular assessment aforesaid", the words, brackets and figures "income determined under sub-section (*1*) of section 143 or on the basis of the regular assessment aforesaid" shall be substituted;

(*iii*) the *Explanation* shall be omitted.

Amendment of section 234C.

40. In section 234C of the Income-tax Act, in sub-section (*1*),—

(*a*) the following proviso shall be inserted before the *Explanation*, namely:—

"Provided that nothing contained in this sub-section shall apply to any shortfall in the payment of the tax due on the returned income where such shortfall is on account of under-estimate or failure to estimate,—

(*a*) the amount of capital gains; or

(*b*) income of the nature referred to in sub-clause (*ix*) of clause (*24*) of section 2,

and the assessee has paid the whole of the amount of tax payable in respect of income referred to in clause (*a*) or clause (*b*), as the case may be, had such income been a part of the total income, as part of the instalment of advance tax which is immediately due.";

(*b*) in the *Explanation*, for the words, figures and letter "the amount of tax deductible at source in accordance with the provisions of Chapter XVII B on any income which is subject to such deduction", the words and figures "the amount of tax deductible or collectible at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection" shall be substituted;

Amendment of section 244A.

41. In section 244A of the Income-tax Act [as inserted by section 98 of the Direct Tax Laws (Amendment) Act, 1987], 4 of 1988.

(*a*) in sub-section (*1*),—

(*i*) for the words "Where, in pursuance of any order passed under this Act, refund of any amount becomes due to the assessee", the words "Where refund of any amount becomes due to the assessee under this Act" shall be substituted;

(*ii*) in clause (*a*),—

(*a*) in the opening portion, after the words "out of any tax", the words, figures and letter "collected at source under section 206C or" shall be inserted;

(*b*) in the proviso, after the words "tax as determined", the words, brackets and figures "under sub-section (*1*) of section 143 or" shall be inserted;

(*b*) in sub-section (*3*), after the words "an order under", the words, brackets and figures "sub-section (*3*) of section 143 or" shall be inserted.

Amendment of sub-heading to chapter XX.

42. In the sub-heading to Chapter XX of the Income-tax Act [as substituted by section 99 of the Direct Tax Laws (Amendment) Act, 1987], the words "*or applications*" shall be omitted. 4 of 1988.

Amendment of section 246.

4 of 1988. 43. In section 246 of the Income-tax Act [as substituted by section 99 of the Direct Tax Laws (Amendment) Act, 1987],—

(*a*) in sub-section (*1*),—

(*i*) in clauses (*g*) and (*h*), the words, figures and letters "in respect of any assessment for the assessment year commencing on the 1st day of April, 1988 or any earlier assessment year" occurring at the end shall be omitted;

(*ii*) in clause (*l*),—

(*1*) in sub-clause (*ii*), for the words, figures and letters "section 271E or section 272A", the words, figures and letters "section 271E, section 272A, section 272AA or section 272BB" shall be substituted;

(*2*) in sub-clause (*iii*), the words, brackets and figures "sub-section (*1*) of section 271," shall be omitted;

(*b*) in sub-section (*2*),—

(*i*) in clause (*b*), after the words, brackets and figure "sub-section (*1*)", the words, figures and letters "or an order under section 104, as it stood immediately before the 1st day of April, 1988 in respect of any assessment for the assessment year commencing on the 1st day of April, 1987 or any earlier assessment year," shall be inserted;

(*ii*) after clause (*f*), the following clause shall be inserted namely:—

"(*ff*) an order made by a Deputy Commissioner imposing a penalty under section 272AA;";

(*iii*) for clause (*g*), the following clause shall be substituted, namely:—

"(*g*) an order imposing a penalty under Chapter XXI by the Income-tax Officer or the Assistant Commissioner, where such penalty has been imposed with the previous approval of the Deputy Commissioner under sub-section (*2*) of section 274;".

Omission of section 246A.

4 of 1988. 44. Section 246A of the Income-tax Act [as inserted by section 99 of the Direct Tax Laws (Amendment) Act, 1987] shall be omitted.

Amendment of section 249.

45. In section 249 of the Income-tax Act, in sub-section (*4*), in the proviso,—

(*i*) after the words "Provided that,", the words, brackets and letter "in a case falling under clause (*b*) and" shall be inserted;

(*ii*) for the words "this sub-section", the words "that clause" shall be substituted.

Amendment of section 253.

46. In section 253 of the Income-tax Act, in sub-section (*1*),—

(*i*) in clause (*a*), the words, brackets and figures "sub-section (*2*) of section 131," shall be omitted;

(*ii*) in clause (*c*), the words, figures and letter "or an order passed by a Chief Commissioner or a Director General or a Director under section 272A" shall be inserted at the end.

Amendment of section 255.

47. In section 255 of the Income-tax Act, in sub-section (*3*), for the words "forty thousand rupees", the words "one lakh rupees" shall be substituted.

Amendment of section 269A.

48. In section 269A of the Income-tax Act, in clause (*b*), for the words "an Assistant Commissioner of Income-tax", the words " a Deputy Commissioner" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1988.

Amendment of section 269B.

49. In section 269B of the Income-tax Act, in sub-section (*1*), in clause (*a*), for the words "Assistant Commissioners of Income-tax", the words "Deputy Commissioners" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1988.

Amendment of section 271.

50. In section 271 of the Income-tax Act [as it stood immediately before its substitution by section 106 of the Direct Tax Laws (Amendment) Act, 1987],— 4 of 1988.

(*a*) in sub-section (*1*),—

(*i*) clause (*a*) shall be omitted;

(*ii*) clause (*i*) shall be omitted;

(*iii*) for clause (*ii*), the following clause shall be substituted, namely:—

"(*ii*) in the cases referred to in clause (*b*), in addition to any tax payable by him, a sum which shall not be less than one thousand rupees but which may extend to twenty-five thousand rupees for each such failure;";

(*iv*) in clause (*iii*),—

(*1*) for the word "twice" the words "three times" shall be substituted;

(*2*) the proviso shall be omitted;

(*v*) for *Explanation* 3, the following *Explanation* shall be substituted, namely:—

"*Explanation* 3.—Where any person who has not previously been assessed under this Act, fails, without reasonable cause, to furnish within the period specified in sub-section (*1*) of section 153 a return of his income which he is required to furnish under section 139 in respect of any assessment year commencing on or after the 1st day of April, 1989, and until the expiry of the period aforesaid, no notice has been issued to him under clause (*i*) of sub-section (*1*) of section 142 or section 148 and the Assessing Officer or the Deputy Commissioner (Appeals) or the Commissioner (Appeals) is satisfied that in respect of such assessment year such person has taxable income, then, such person shall, for the purposes of clause (*c*) of this sub-section, be deemed to have concealed the particulars of his income in

respect of such assessment year, notwithstanding that such person furnishes a return of his income at any time after the expiry of the period aforesaid in pursuance of a notice under section 148.";

(*vi*) in *Explanation* 5, in cluase (*2*), the words, brackets and letters "clause (*a*) or clause (*b*) of" shall be omitted.

(*vii*) after *Explanation* 5, the following *Explanation* shall be inserted, namely:—

"*Explanation* 6.—Where any adjustment is made in the income or loss declared in the return under the proviso to clause (*a*) of sub-section (*1*) of section 143 and additional tax charged under that section, the provisions of this sub-section shall not apply in relation to the adjustment so made.";

(*b*) sub-section (*3*) shall be omitted;

(*c*) after sub-section (*4*), the following sub-section shall be inserted, namely:—

"(*5*) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1988 shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.".

Amendment of section 273A.

51. In section 273A of the Income-tax Act [as amended by section 113 of the Direct Tax Laws (Amendment) Act, 1987],— 4 of 1988.

(*a*) in sub-section (*1*),—

(*i*) clauses (*i*) and (*iii*) shall be omitted;

(*ii*) clauses (*a*) and (*c*) shall be omitted;

(*iii*) for the words, brackets and letters "in all the cases referred to in clauses (*a*), (*b*) and (*c*)", the words, brackets and letter "in the case referred to in clause (*b*)" shall be substituted;

(*b*) in sub-section (*2*), clause (*a*) shall be omitted;

(*c*) in sub-section (*6*), after the words "of this section", the words, brackets and figures "as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1988" shall be inserted.

Amendment of section 275.

52. In section 275 of the Income-tax Act, in clause (*a*) [as substituted by section 116 of the Direct Tax Laws (Amendment) Act, 1987], after the words "the order of", the words and brackets "the Deputy Commissioner (Appeals) or" shall be inserted. 4 of 1988.

Insertion of new section 279B.

53. After section 279A of the Income-tax Act, the following section shall be inserted, namely:—

Proof of entries in records or documents.

"279B. Entries in the records or other documents in the custody of an Income-tax authority shall be admitted in evidence in any proceedings for the prosecution of any person for an offence under this Chapter, and all such entries may be proved either by the production of the records or other documents in the custody of the Income-tax authority containing such entries, or by the production of a copy of the entries certified by the Income-tax authority having custody of the records or other documents under its signature and stating that it is a true copy of the original entries and that such original entries are contained in the records or other documents in its custody."

Amendment of Second Schedule.

54. In the Second Schedule to the Income-tax Act—

(*a*) [as it stood immediately before its amendment by the Direct Tax Laws (Amendment) Act, 1987], for the words "Income-tax Officer", wherever they occur, the words "Assessing Officer" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1988; 4 of 1988

(*b*) [as amended by clause (*a*) of this section],—

(*1*) in rule 2, for the words "When a certificate has been received by the Tax Recovery Officer from the Assessing Officer", the words "When a certificate has been drawn up by the Tax Recovery Officer" shall be substituted;

(*2*) in rule 9, for the words "Assessing Officer", the words "Tax Recovery Officer" shall be substituted;

(*3*) in rule 14, for the words "Assessing Officer", the words "Tax Recovery Officer" shall be substituted;

(*4*) in rule 25, in sub-rule (*1*), for the words "and the Assessing Officer shall bear such sum as the Tax Recovery Officer shall require in order to defray the cost of such arrangements", the words "and he shall have power to defray the cost of such arrangements" shall be substituted;

(*5*) in rule 27, for the words "Assessing Officer", wherever they occur, the words "Tax Recovery Officer" shall be substituted;

(*6*) in rule 31, for the words "Assessing Officer" occurring in the proviso, the words "Tax Recovery Officer" shall be substituted;

(*7*) in rule 47, for the words "direct that such coins or notes, or a part thereof sufficient to satisfy the certificate, be paid over to the Assessing Officer", the words and figures "direct that such coins or notes shall be credited to the Central Government and the amount so credited shall be dealt with in the manner specified in rule 8" shall be substituted;

(*8*) in rule 60, in sub-rule (*1*), in clause (*a*), the words "for payment to the Assessing Officer" shall be omitted;

(*9*) in rule 61, for the words "Assessing Officer", the words "such Income-tax Officer as may be authorised by the Chief Commissioner or Commissioner in this behalf" shall be substituted;

(*10*) in rule 74, for the words "the Tax Recovery Officer shall proceed to hear the Assessing Officer and take all such evidence as may be produced by him in support of execution by arrest, and shall then give the defaulter", the words "the Tax Recovery Officer shall give the defaulter" shall be substituted;

(*11*) in rule 85, for the words "If at any time after the issue of the certificate by the Assessing Officer to the Tax Recovery Officer", the words "If at any time after the certificate is drawn up by the Tax Recovery Officer" shall be substituted;

(*12*) in rule 90, in sub-rule (*1*), for the words "Assessing Officer", the words "Tax Recovery Officer" shall be substituted.

Amendment of Third Schedule.

55. In the Third Schedule to the Income-tax Act—

(*a*) [as it stood immediately before its amendment by the Direct Tax Laws (Amendment) Act, 1987], for the words "Income-tax Officer", the words "Assessing Officer" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1988; 4 of 1988.

(*b*) [as amended by clause (*a*) of this section], after the words "Assessing Officer", the words "or Tax Recovery Officer" shall be inserted.

Amendment of Tenth Schedule.

56. In the Tenth Schedule to the Income-tax Act [as inserted by section 125 of the Direct Tax Laws (Amendment) Act, 1987], 4 of 1988.—

(*i*) in rule 1,—

(*a*) for the words "the proviso", the words "the first proviso or the third proviso" shall be substituted;

(*b*) for the words "the said proviso", the words "the said first proviso or, as the case may be, the said third proviso" shall be substituted;

(*ii*) in rule 3,—

(*a*) after the proviso, the following provisos shall be inserted, namely:—

"Provided further that the amount of ten thousand rupees, specified in column (2) of the said Table against sub-section (2) of section 48, shall be increased during the transitional previous year only where the long-term capital gain arises as a result of two or more transfers of long-term capital assets and at least one of the said transfers is made during the initial period of twelve months comprised within the transitional previous year and the remaining transfer or transfers is or are made during the period beyond the said period of twelve months comprised within the transitional previous year:

Provided also that where more than one period in respect of different sources of income are included in the transitional previous year under the first proviso or the third proviso to sub-section (2) of section 3, then the amount or amounts specified in column (2) of the said Table shall be increased to such extent and in such manner as the Board may, having regard to,—

(*a*) length of the period or periods included in the transitional previous year in respect of different sources of income;

(*b*) length of the transitional previous year; and

(*c*) other relevant factors,

prescribe in this behalf";

(*b*) for the Table, the following Table shall be substituted, namely:—

"TABLE

Provision of the Act (1)	Amount (2)
	Rs.
Section 10(3)	5,000
Section 12A(b)	25,000
Section 13 (2)(g)	1,000
Section 13 (3)(b)	25,000
Section 16(i)	12,000
Section 16(i), proviso	1,000
Section 16(ii)	5,000 and 7,500
Section 23(1) (d) (ii)	3,600
Section 24(2), proviso	5,000
Section 33A(7), proviso	40,000, 35,000 and 30,000
Section 35A	1/14th of the amount of capital expenditure
Section 35AB	1/6th or 1/3rd of the amount paid as lumpsum consideration.
Section 35D	1/10th of the amount of certain preliminary expenses.
Section 37(2A)	5,000 and 50,000
Section 40A(12)	10,000
Section 44AA (2) (i) and (ii)	25,000 and 2,50,000
Section 44AB	40,00,000 and 10,00,000
Section 48(2)	10,000
Section 80C(1)	6,000, 9,000 and 12,000
Section 80C(3)	1/10th of the actual capital sum assured
Section 80C(4)	60,000 and 40,000

Provision of the Act (1)	Amount (2)
	Rs.
Section 80C(7) (c)	10,000
Section 80CC (2)	20,000
Section 80CCA(1)	30,000
Section 80D(1)	3,000
Section 80L(1)	7,000 (occurring in two places)
Section 80L(1), 1st proviso	3,000
Section 80L(1), 2nd proviso	3,000
Section 80P(2)(c)	40,000 and 20,000
Section 80P (2)(f)	20,000
Section 80U	15,000
Section 139A(2)	50,000";

(*iii*) for rules 4 and 5, the following rules shall be substituted, namely:—

Modification in section 6.

'4. Where the transitional previous year comprises a period of eighteen months or more, then, sub-section (*1*) of section 6 shall be subject to the modification that references therein to the periods of one hundred and eighty-two days, ninety days and sixty days shall be construed as references, respectively, to the periods of two hundred and seventy-three days, one hundred and thirty-five days and ninety days.

Modification in respect of depreciation allowance.

5. Where the assessee's income under the head "Profits and gains of business or profession" or under the head "Income from other sources" for a period of thirteen months or more is included in his total income for the transitional previous year, the allowance under clause (*ii*) of sub-section (*1*) of section 32 or, as the case may be, under clause (*ii*) of section 57 in respect of depreciation on block of assets calculated in the manner stated in clause (*ii*) of sub-section (*1*) of section 32, shall be increased by multiplying it by a fraction of which the numerator is the number of months in the transitional previous year and the denominator is twelve:

Provided that where more than one period in respect of income under the head "Profits and gains of business or profession" or under the head "Income from other sources" are included in the transitional previous year under the first proviso or the third proviso to sub-section (*2*) of section 3, the allowance in respect of depreciation on block of assets shall be calculated separately for each such period included in the transitional previous year in the manner stated in clause (*ii*) of sub-section (*1*) of section 32 and increased, where necessary, by multiplying it by a fraction of which the numerator is the number of months in such period (after excluding the number of months relatable to the period in relation to which depreciation on block of assets

has been allowed or is allowable in the previous year relevant to the assessment year commencing on the 1st day of April, 1988) and the denominator is twelve';

(*iv*) in rule 6, the following proviso shall be inserted at the end, namely:—

"Provided that where more than one period in respect of different sources of income are included in the transitional previous year under the first proviso or the third proviso to sub-section (2) of section 3, then the tax shall be chargeable at the average rate of tax, calculated in accordance with the provisions of this rule, on the total income of the transitional previous year after excluding from such total income the income relatable to any such period or periods which has already been included or is includible in the total income of the previous year or previous years relevant to the assessment year commencing on the 1st day of April, 1988.".

Consequential amendments.

57. The following amendments (being amendments of a consequential nature) shall be made in the Income-tax Act, namely:—

(*1*) in section 80A, in sub-section (*3*) [as it stood immediately before its substitution by section 21 of the Direct Tax Laws (Amendment) Act, 1987],— 4 of 1988.

(*a*) after the figures and letters "80HHC", the words, figures and letters "or section 80HHD" shall be inserted;

(*b*) the words, figures and letters "or section 80QQ or section 80T" shall be omitted;

(*2*) in section 80P, in sub-section (*3*),—

(*a*) after the words, figures and letters "or section 80HHC", the words, figures and letters "or section 80HHD" shall be inserted;

(*b*) after the figures and letters "80HHC,", the word, figures and letters "section 80HHD," shall be inserted;

(*3*) in section 184 [as it stood immediately before its substitution by section 68 of the Direct Tax Laws (Amendment) Act, 1987], in sub-section (*7*), in the proviso, in clause (*ii*), for the words, brackets and figures "sub-section (*1*) or sub-section (*2*) of section 139 (whether fixed originally or on extension)", the words, brackets and figures "sub-section (*1*) of section 139" shall be substituted. 4 of 1988.

CHAPTER III

AMENDMENTS TO THE WEALTH-TAX ACT, 1957

Amendment of section 2.

58. In section 2 of the Wealth-tax Act, 1957 (hereafter in this Chapter referred to as the Wealth-tax Act), in clause (*m*), the *Explanation* shall be renumbered as *Explanation* 1 and after *Explanation* 1 as so renumbered, the following *Explanation* shall be inserted, namely:— 27 of 1957.

"*Explanation* 2.—Where a debt falling under sub-clause (*ii*) is secured on, or has been incurred in relation to, any asset which is

not to be included wholly or partly in the net wealth by virtue of the provisions of sub-section (*1A*) of section 5, the amount of such debt shall, for the purposes of the said sub-clause, be limited to the value of the said asset which is not includible in the net wealth under sub-section (*1A*) of section 5.".

Amendment of section 4.

59. In section 4 of the Wealth-tax Act,—

(*a*) in sub-section (*1*),—

(*i*) for the portion beginning with the words "In computing the net wealth of an individual" and ending with the words "on the valuation date are held—", the following shall be substituted, namely:—

"In computing the net wealth—

(*a*) of an individual, there shall be included, as belonging to that individual, the value of assets which on the valuation date are held—";

(*ii*) for clause (*b*), the following clause shall be substituted, namely:—

"(*b*) of an assessee who is a partner in a firm or a member of an association of persons (not being a co-operative housing society), there shall be included, as belonging to that assessee, the value of his interest in the firm or association determined in the manner laid down in Schedule III:

Provided that where a minor is admitted to the benefits of partnership in a firm, the value of the interest of such minor in the firm, determined in the manner specified above, shall be included in the net wealth of that parent of the minor whose net wealth (excluding the interest of the minor in the firm referred to in this clause) is greater; and where any such interest is once included in the net wealth of either parent for any assessment year, any such interest in any succeeding year shall not be included in the net wealth of the other parent unless the Assessing Officer is satisfied, after giving that parent an opportunity of being heard, that it is necessary so to do.";

(*b*) sub-section (*2*) shall be omitted.

Amendment of section 5.

60. In section 5 of the Wealth-tax Act,—

(*a*) in sub-section (*1*), after clause (*xvif*), the following clause shall be inserted, namely:—

"(*xvig*) in the case of an individual who is a non-resident Indian during the year ending on the valuation date, or a nominee or survivor of such individual or an individual receiving by way of gift from such individual, the bonds specified under sub-clause (*iid*) of clause (*15*) of section 10 of the Income-tax Act:

Provided that where an individual, who is a non-resident Indian during the year ending on the valuation date in which the bonds are acquired, becomes a resident in India in any

subsequent year ending on the valuation date, the provisions of this clause shall continue to apply in relation to such individual.

Explanation.—For the purposes of this clause, an individual shall be deemed to be a non-resident Indian during the year ending on the valuation date if in respect of that year the individual is a non-resident Indian within the meaning of clause (*e*) of section 115C of the Income-tax Act;";

(*b*) in sub-section (*1A*), the following *Explanation* shall be inserted at the end, namely:—

"*Explanation*.—Where a debt is secured on, or has been incurred in relation to, any asset referred to in this sub-section, the exemption under this sub-section shall be allowed first against the value of the asset on which or in relation to which such debt is secured or incurred and, thereafter, against the value of any other asset so referred to.";

(c) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) Where the assessee is a partner of a firm or member of an association of persons, and the firm or association owns any one or more of the assets which are exempt under sub-section (*1*), then, for the purposes of his assessment under this Act, the value of his interest in the firm or association shall be deemed to include the value of a part of each such asset of the firm or association in the same proportion in which he is entitled to share the profits of the firm or association and the assessment shall be made after allowing the exemption under sub-section (*1*) in respect of those assets on the basis of such proportionate value.".

Amendment of section 6.

61. In section 6 of the Wealth-tax Act, in *Explanation* 1A, for the word, brackets, figure and letter "clause (*4A*)", the words, brackets and figures "sub-clause (*ii*) of clause (*4*)" shall be substituted.

Substitution of new section for section 7.

62. For section 7 of the Wealth-tax Act, the following section shall be substituted, namely:—

Value of assets how to be determined.

'7. (*1*) Subject to the provisions of sub-section (*2*), the value of any asset, other than cash, for the purposes of this Act shall be its value as on the valuation date determined in the manner laid down in Schedule III.

(*2*) The value of a house belonging to the assessee and exclusively used by him for residential purposes throughout the period of twelve months immediately preceding the valuation date, may, at the option of the assessee, be taken to be the value determined in the manner laid down in Schedule III as on the valuation date next following the date on which he became the owner of the house or the valuation date relevant to the assessment year commencing on the 1st day of April, 1971, whichever valuation date is later:

Provided that where more than one house belonging to the assessee is exclusively used by him for residential purposes, the provisions of this sub-section shall apply only in respect of one of such houses which the assessee may, at his option, specify in this behalf in the return of net wealth.

Explanation.—For the purposes of this sub-section,—

(*i*) where the house has been constructed by the assessee, he shall be deemed to have become the owner thereof on the date on which the construction of such house was completed;

(*ii*) "house" includes a part of a house being an independent residential unit.'.

4 of 1988.

Amendment of section 11.

63. In section 11 of the Wealth-tax Act [as substituted by section 131 of the Direct Tax Laws (Amendment) Act, 1987], in sub-section (*2*), in clause (*b*), for the brackets and figure "(*5*)", the brackets and figure "(*4*)" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1988.

4 of 1988.

Amendment of section 16.

64. In section 16 of the Wealth-tax Act [as substituted by section 138 of the Direct Tax Laws (Amendment) Act, 1987],—

(*a*) in sub-section (*1*), in clause (*a*), after the proviso, the following proviso shall be inserted, namely:—

"Provided further that an intimation for any tax or interest due under this clause shall not be sent after the expiry of two years from the end of the assessment year in which the net wealth was first assessable.";

(*b*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

'(*1A*) (*a*) Where in the case of any person, the net wealth, as a result of the adjustments made under the proviso to clause (*a*) of sub-section (*1*), exceeds the net wealth declared in the return by any amount, the Assessing Officer shall,—

(*i*) further increase the amount of tax payable under sub-section (*1*) by an additional wealth-tax calculated at the rate of twenty per cent. of the tax payable on such excess amount and specify the additional wealth-tax in the intimation to be sent under sub-clause (*i*) of clause (*a*) of sub-section (*1*);

(*ii*) where any refund is due under sub-section (*1*), reduce the amount of such refund by an amount equivalent to the additional wealth-tax calculated under sub-clause (*i*).

(*b*) Where as a result of an order under section 23 or section 24 or section 25 or section 27 or section 29 or section 35, the amount on which additional wealth-tax is payable under clause (*a*) has been increased or reduced, as the case may be, the

additional wealth-tax shall be increased or reduced accordingly, and,—

(*i*) in a case where the additional wealth-tax is increased, the Assessing Officer shall serve on the assessee a notice of demand under section 30;

(*ii*) in a case where additional wealth-tax is reduced, the excess amount paid, if any, shall be refunded.

Explanation.—For the purposes of this sub-section, "tax payable on such excess amount" means the difference between the tax on the net wealth and the tax that would have been chargeable had such net wealth been reduced by the amount of adjustments.'.

Amendment of section 16A.

65. In section 16A of the Wealth-tax Act, in sub-section (*1*), in the opening portion, after the words "under this Act,", the words and figures "where under the provisions of section 7 read with the rules made under this Act or, as the case may be, the rules in Schedule III, the market value of any asset is to be taken into account in such assessment," shall be inserted.

Amendment of section 17.

66. In section 17 of the Wealth-tax Act, in sub-section (*1*) [as substituted by clause (*a*) of section 139 of the Direct Tax Laws (Amendment) Act, 1987], 4 of 1988.—

(*a*) for the words ", for reasons to be recorded by him in writing, is of the opinion", the words "has reason to believe" shall be substituted;

(*b*) after the proviso, the following proviso shall be inserted, namely:—

"Provided further that the Assessing Officer shall, before issuing any notice under this sub-section, record his reasons for doing so.".

Amendment of section 17B.

67. In section 17B of the Wealth-tax Act [as inserted by section 141 of the Direct Tax Laws (Amendment) Act, 1987], 4 of 1988.—

(*a*) in sub-section (*1*),—

(*i*) after the words "net wealth as determined", the words, brackets and figures "under sub-section (*1*) of section 16 or" shall be inserted;

(*ii*) for *Explanation* 2, the following *Explanation* shall be substituted, namely:—

'*Explanation* 2.—In this sub-section, "tax payable on the net wealth as determined under sub-section (*1*) of section 16" shall not include the additional wealth-tax, if any, payable under section 16.';

(*iii*) after *Explanation* 3, the following *Explanation* shall be inserted, namely:—

'*Explanation* 4.— In this sub-section, "tax payable on the net wealth as determined under sub-section (*1*) of section

16 or on regular assessment" shall, for the purposes of computing the interest payable under section 15B, be deemed to be tax payable on the net wealth as declared in the return.';

(*b*) in sub-section (*3*),—

(*i*) after the words, brackets and figures "sub-section (*1*) of section 17 issued", the words, brackets and figures "after the determination of net wealth under sub-section (*1*) of section 16 or" shall be inserted;

(*ii*) after the words "net wealth as determined", the words, brackets and figures "under sub-section (*1*) of section 16 or" shall be inserted;

(*iii*) the *Explanation* shall be omitted.

Amendment of section 18.

68. In section 18 of the Wealth-tax Act [as it stood immediately before its substitution by section 142 of the Direct Tax Laws (Amendment) Act, 1987],—

4 of 1988.

(*a*) in sub-section (*1*),—

(*i*) clause (*a*) shall be omitted;

(*ii*) clause (*i*) shall be omitted;

(*iii*) for clause (*ii*), the following clause shall be substituted, namely:—

"(*ii*) in the cases referred to in clause (*b*), in addition to the amount of wealth-tax payable by him, a sum which shall not be less than one thousand rupees but which may extend to twenty-five thousand rupees for each such failure;";

(*iv*) for the proviso, the following proviso shall be substituted, namely:—

"Provided that in the cases referred to in clause (*b*), no penalty shall be imposable if the person proves that there was a reasonable cause for the failure referred to in that clause.";

(*v*) for *Explanation* 3, the following *Explanation* shall be substituted, namely:—

"*Explanation* 3.—Where any person who has not previously been assessed under this Act, fails, without reasonable cause, to furnish within the period specified in sub-section (*1*) of section 17A, a return of his net wealth which he is required to furnish under section 14 in respect of any assessment year commencing on or after the 1st day of April, 1989, and until the expiry of the period aforesaid, no notice has been issued to him under clause (*i*) of sub-section (*4*) of section 16 or sub-section (*1*) of section 17 and the Assessing Officer or the Deputy Commissioner (Appeals) or the Commissioner (Appeals) is satisfied that in respect of such assessment year such person has assessable net wealth,

then, such person shall, for the purposes of clause (c) of this sub-section, be deemed to have concealed the particulars of his assets or furnished inaccurate particulars of any assets or debts in respect of such assessment year, notwithstanding that such person furnishes a return of his net wealth at any time after the expiry of either of the periods aforesaid applicable to him in pursuance of a notice under section 17.";

(*vi*) after *Explanation* 5, the following *Explanation* shall be inserted, namely:—

"*Explanation* 6.—Where any adjustment is made in the wealth declared in the return under the proviso to clause (*a*) of sub-section (*1*) of section 16 and additional wealth-tax charged under that section, the provisions of this sub-section shall not apply in relation to the adjustments so made.";

(*b*) for sub-section (*3*), the following sub-section shall be substituted, namely:—

"(*3*) No order imposing a penalty under sub-section (*1*) shall be made,—

(*i*) by the Income-tax Officer, where the penalty exceeds ten thousand rupees;

(*ii*) by the Assistant Commissioner, where the penalty exceeds twenty thousand rupees,

except with the prior approval of the Deputy Commissioner.";

(*c*) sub-section (*3A*) shall be omitted;

(*d*) for sub-section (*5*), the following sub-sections shall be substituted, namely:—

"(*5*) No order imposing a penalty under this section shall be passed—

(*i*) in a case where the assessment to which the proceedings for imposition of penalty relate is the subject-matter of an appeal to the Deputy Commissioner (Appeals) or the Commissioner (Appeals) under section 23 or an appeal to the Appellate Tribunal under sub-section (*2*) of section 24, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which the order of the Deputy Commissioner (Appeals) or the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Chief Commissioner or Commissioner, whichever is later;

(*ii*) in a case where the relevant assessment is the subject-matter of revision under sub-section (*2*) of section 25, after the expiry of six months from the end of the month in which such order of revision is passed;

(*iii*) in any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.

Explanation.—In computing the period of limitation for the purposes of this section,—

(*i*) any period during which the immunity granted under section 22H remained in force;

(*ii*) the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 39; and

(*iii*) any period during which a proceeding under this section for the levy of penalty is stayed by an order or injunction of any court,

shall be excluded.

(*6*) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1988 shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.".

Substitution of new section for section 18A.

69. For section 18A of the Wealth-tax Act [as it stood immediately before its substitution by section 142 of the Direct Tax Laws (Amendment) Act, 1987]], the following section shall be substituted, namely:—

4 of 1988.

Penalty for failure to answer questions, sign statements, furnish information, allow inspection, etc.

'18A. (*1*) If any person,—

(*a*) being legally bound to state the truth of any matter touching the subject of his assessment, refuses to answer any question put to him by a wealth-tax authority in the exercise of his powers under this Act; or

(*b*) refuses to sign any statement made by him in the course of any proceedings under this Act, which a wealth-tax authority may legally require him to sign; or

(*c*) to whom a summons is issued under sub-section (*1*) of section 37 either to attend to give evidence or produce books of account or other documents at a certain place and time, omits to attend or produce the books of account or documents at the place and time,

he shall pay, by way of penalty, a sum which shall not be less than five hundred rupees but which may extend to ten thousand rupees for each such default or failure:

Provided that no penalty shall be imposable under clause (*c*) if the person proves that there was reasonable cause for the said failure.

(*2*) If a person fails to furnish in due time any statement or information which such person is bound to furnish to the Assessing Officer under section 38, he shall pay, by way of penalty, a sum which shall not be less than one hundred rupees but which may extend to two hundred rupees for every day during which the failure continues:

Provided that no penalty shall be imposable under this sub-section if the person proves that there was reasonable cause for the said failure.

(*3*) Any penalty imposable under sub-section (*1*) or sub-section (*2*) shall be imposed—

(*a*) in a case where the contravention, failure or default in respect of which such penalty is imposable occurs in the course of any proceeding before a wealth-tax authority not lower in rank than a Deputy Director or a Deputy Commissioner, by such wealth-tax authority;

(*b*) in any other case, by the Deputy Director or the Deputy Commissioner.

(*4*) No order under this section shall be passed by any wealth-tax authority referred to in sub-section (*3*) unless the person on whom the penalty is proposed to be imposed has been heard, or has been given a reasonable opportunity of being heard in the matter, by such authority.

Explanation.—In this section, "wealth-tax authority" includes a Director General, Director, Deputy Director, Assistant Director and a Valuation Officer while exercising the powers vested in a court under the Code of Civil Procedure, 1908, when trying a suit in respect of the matters specified in sub-section (*1*) of section 37.'. 5 of 1908.

Amendment of section 18B.

70. In section 18B of the Wealth-tax Act,—

(*a*) in sub-section (*1*),—

(*i*) clause (*i*) shall be omitted;

(*ii*) clause (*a*) shall be omitted;

(*b*) after sub-section (*5*), the following sub-section shall be inserted, namely:—

"(*6*) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1988, shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.".

Amendment of section 23.

71. In section 23 of the Wealth-tax Act [as amended by section 146 of the Direct Tax Laws (Amendment) Act, 1987],— 4 of 1988.

(*i*) in sub-section (*1*), in clause (*d*), the words, figures and letters "as it stood immediately before the 1st day of April, 1989 or

4 of 1988. under section 18 as amended by the Direct Tax Laws (Amendment) Act, 1987" occurring at the end shall be omitted;

(*ii*) in sub-section (*1A*), for clause (*b*), the following clause shall be substituted, namely:—

"(*b*) objecting to any penalty imposed under sub-section (*1*) of section 18 with the previous approval of the Deputy Commissioner as specified in sub-section (*3*) of that section;".

Amendment of section 26.

72. In section 26 of the Wealth-tax Act, in sub-section (*1*), after the word and figures "section 25", the words, figures and letter "or an order passed by the Director General or Director under section 18A" shall be inserted.

Amendment of section 34A.

73. In section 34A of the Wealth-tax Act,—

4 of 1988. (*a*) in sub-section (*1*), in the proviso [as inserted by clause (*i*) of section 150 of the Direct Tax Laws (Amendment) Act, 1987], in clause (*b*), for the words "total income", the words "net wealth" shall be substituted;

4 of 1988. (*b*) in sub-section (*4B*) [as inserted by section 150 of the Direct Tax Laws (Amendment) Act, 1987],—

(*i*) in clause (*a*), for the words "Where, in pursuance of any order passed under this Act, the refund of any amount becomes due to the assessee", the words "Where refund of any amount becomes due to the assessee under this Act," shall be substituted;

(*ii*) in clause (*c*), after the words "an order under", the words, brackets and figures "sub-section (*3*) of section 16 or" shall be inserted.

4 of 1988. Amendment of section 35.

74. In section 35 of the Wealth-tax Act [as amended by section 160 of the Direct Tax Laws (Amendment) Act, 1987], in sub-section (*1*), in clause (*c*), the words, figures and letter "or section 23A" shall be omitted.

Insertion of new section 36.

75. After section 35-O of the Wealth-tax Act, the following section shall be inserted, namely:—

Proof of entries in records or documents.

"36. Entries in the records or other documents in the custody of a wealth-tax authority shall be admitted in evidence in any proceedings for the prosecution of any person for an offence under this Act, and all such entries may be proved either by the production of the records or other documents in the custody of the Wealth-tax authority containing such entries or by the production of a copy of the entries certified by the Wealth-tax authority having custody of the records or other documents under its signature and stating that it is a true copy of the original entries and that such original entries are contained in the records or other documents in its custody.".

Amendment of section 41.

76. In section 41 of the Wealth-tax Act, in sub-section (*2*), for the words "and in the case of any other association of persons", the words "and in the case of a company or any other association of persons" shall be substituted.

Amendment of section 42A.

77. In section 42A of the Wealth-tax Act, the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—In the case of a company, the names of the directors, secretaries and treasurers, or managers of the company, may also be published if, in the opinion of the Central Government, the circumstances of the case justify it.".

Insertion of new Schedule III.

78. In the Wealth-tax Act, after Schedule II, the following Schedule shall be inserted, namely:—

'SCHEDULE III

[*See* section 7(*1*)]

RULES FOR DETERMINING THE VALUE OF ASSETS

PART A

General

Value of assets how to be determined.

1. The value of any asset, other than cash, for the purposes of this Act, shall be determined in the manner laid down in these rules.

Definitions.

2. In this Schedule, unless the context otherwise requires,—

(*1*) "accounting year" in relation to a company means a period in respect of which any profit and loss account of the company laid before it in the annual general meeting is made up;

(*2*) "debenture" includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the company or not;

(*3*) "equity share" means any share in the share capital of a company other than a preference share.

(*4*) "gold" means gold, including its alloy, whether virgin, melted, remelted, wrought or unwrought, in any shape or form of a purity of not less than nine carats and includes any gold coin (whether legal tender or not), any gold ornament and other article of gold;

(*5*) "gold ornament" means any article in a finished form, meant for personal adornment or for the adornment of any idol, deity or any other object of religious worship, made of, or manufactured from, gold, whether or not set with stones or gems, real or artificial, or with pearls, real, cultured or imitation, or with all or any of them and includes parts, pendants or broken pieces of gold ornaments;

(*6*) "investment company" means a company whose gross total income consists mainly of income which is chargeable to income-tax under the heads "Income from house property", "Capital gains' and "Income from other sources".

Explanation.—In this clause, the expression "gross total income" shall have the meaning assigned to it in section 80B of the Income-tax Act;

(7) "jewellery" includes—

(a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stones, and whether or not worked or sewn into any wearing apparel;

(b) precious or semi-precious stones, whether or not set in any furniture, utensils or other article or worked or sewn into any apparel;

(8) "preference share" has the meaning assigned to it in section 85 of the Companies Act, 1956; 1 of 1956.

(9) "quoted share" or "quoted debenture", in relation to an equity share or a preference share or, as the case may be, a debenture, means a share or debenture quoted on any recognised stock exchange with regularity from time to time, where the quotations of such shares or debentures are based on current transactions made in the ordinary course of business.

Explanation.—Where any question arises whether a share or debenture is a "quoted share" or a "quoted debenture" within the meaning of this clause, a certificate to that effect furnished by the concerned stock exchange in the prescribed form shall be accepted as conclusive;

(10) "recognised stock exchange" has the meaning assigned to it in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956; 42 of 1956.

(11) "unquoted share" or "unquoted debenture", in relation to an equity share or a preference share or, as the case may be, a debenture, means a share or debenture which is not a quoted share or a quoted debenture.

PART B

Immovable property

Valuation of immovable property.

3. Subject to the provisions of rules 4, 5, 6, 7 and 8, for the purposes of sub-section (1) of section 7, the value of any immovable property, being a building or land appurtenant thereto, or part thereof, shall be the amount arrived at by multiplying the net maintainable rent by the figure 12.5:

Provided that in relation to any such property which is constructed on leasehold land, this rule shall have effect as if for the figure 12.5,—

(a) where the unexpired period of the lease of such land in fifty years or more, the figure 10.0 had been substituted; and

(b) where the unexpired period of the lease of such land is less than fifty years, the figure 8.0 had been substituted:

Provided further that where such property is acquired or construction of which is completed after the 31st day of March, 1974 if the value so

arrived at is lower than the cost of acquisition or the cost of construction, as increased, in either case, by the cost of any improvement to the property, the cost of acquisition or, as the case may be, the cost of construction, as so increased, shall be taken to be the value of the property under this rule.

Net maintainable rent how to be computed.

4. For the purposes of rule 3, "net maintainable rent" in relation to an immovable property referred to in that rule, shall be the amount of gross maintainable rent as reduced by—

(*i*) the amount of taxes levied by any local authority in respect of the property; and

(*ii*) a sum equal to fifteen per cent. of the gross maintainable rent.

Gross maintainable rent how to be computed.

5. For the purposes of rule 4, "gross maintainable rent", in relation to any immovable property referred to in rule 3, means—

(*i*) where the property is let, the amount received or receivable by the owner as annual rent or the annual value assessed by the local authority in whose area the property is situated for the purposes of levy of property tax or any other tax on the basis of such assessment, whichever is higher;

(*ii*) where the property is not let, the amount of annual rent assessed by the local authority in whose area the property is situated for the purpose of levy of property tax or any other tax on the basis of such assessment, or, if there is no such assessment or the property is situated outside the area of any local authority the amount which the owner can reasonably be expected to receive as annual rent had such property been let.

Explanation.—In this rule,—

(*1*) "annual rent" means,—

(*a*) where the property is let throughout the year ending on the valuation date (hereinafter referred to as "previous year"), the actual rent received or receivable by the owner in respect of such year;

(*b*) where the property is let for only a part of the previous year, the amount which bears the same proportion to the amount of actual rent received or receivable by the owner for the period for which the property is let as the period of twelve months bears to the number of months (including part of a month) during which the property is let during the previous year:

Provided that in the following cases, such actual rent under sub-clauses (*a*) and (*b*) shall be increased in the manner specified below:—

(*i*) where the property is in the occupation of a tenant and taxes levied by any local authority in respect of the property are borne wholly or partly by the tenant, by the amount of the taxes so borne by the tenant:

(*ii*) where the property is in the occupation of a tenant and expenditure on repairs in respect of the property is borne by the tenant, by one-ninth of the actual rent;

(*iii*) where the owner has accepted any amount as deposit (not being advance payment towards rent for a period of three months or less), by the amount calculated at the rate of 15 per cent. per annum on the amount of deposit outstanding from month to month, for the number of months (excluding part of a month) during which such deposit was held by the owner in the previous year, and if the owner is liable to pay interest on such deposit, the increase to be made under this clause shall be limited to the sum by which the amount calculated as aforesaid exceeds the interest actually paid;

(*iv*) where the owner has received any amount by way of premium or otherwise as consideration for leasing of the property or any modification of the terms of the lease, by the amount obtained by dividing the premium or other amount by the number of years of the period of the lease;

(*v*) where the owner derives any benefit or perquisite, whether convertible into money or not, as consideration for leasing of the property or any modification of the terms of the lease, by the value of such benefit or perquisite;

(2) "rent received or receivable" shall include all payments for the use of the property, by whatever name called, the value of all benefits or perquisites whether convertible into money or not, obtained from a tenant or occupier of the property and any sum paid by a tenant or occupier of the property in respect of any obligation which, but for such payment, would have been payable by the owner.

Adjustments to value arrived at under rule 3, for unbuilt area of plot of land.

6. Where the unbuilt area of the plot of land on which the property referred to in rule 3 is constructed exceeds the specified area, the value arrived at in accordance with the provisions of rule 3 shall be increased by an amount calculated in the following manner, namely:—

(*a*) where the difference between the unbuilt area and the specified area exceeds five per cent. but does not exceed ten per cent, of the aggregate area, by an amount equal to twenty per cent of such value;

(*b*) where the difference between the unbuilt area and the specified area exceeds ten per cent. but does not exceed fifteen per cent. of the aggregate area by an amount equal to thirty per cent. of such value;

(*c*) where the difference between the unbuilt area and the specified area exceeds fifteen per cent. but does not exceed twenty per cent. of the aggregate area by an amount equal to forty per cent of such value.

Explanation.—For the purposes of this rule and rule 6,—

(*a*) "aggregate area", in relation to the plot of land on which the property is constructed, means the aggregate of the area on which the property is constructed and the unbuilt area;

(*b*) "specified area", in relation to the plot of land on which the property is constructed, means—

(*i*) where the property is situate at Bombay, Calcutta, Delhi or Madras, sixty per cent. of the aggregate area;

(*ii*) where the property is situate at Agra, Ahmedabad, Allahabad, Amritsar, Bangalore, Bhopal, Cochin, Hyderabad, Indore, Jabalpur, Jamshedpur, Kanpur, Lucknow, Ludhiana, Madurai, Nagpur, Patna, Pune, Salem, Sholapur, Srinagar, Surat, Tiruchirappalli, Trivandrum, Vadodara (Baroda) or Varanasi (Banaras), sixty-five per cent. of the aggregate area; and

(*iii*) where the property is situate at any other place, seventy per cent. of the aggregate area:

Provided that where, under any law for the time being in force, the minimum area of the plot of land required to be kept as open space for the enjoyment of the property exceeds the specified area, such minimum area shall be deemed to be the specified area;

(*c*) "unbuilt area", in relation to the aggregate area of the plot of land on which the property is constructed, means that part of such aggregate area on which no building has been erected.

Adjustment for unearned increase in the value of the land.

7. Where the property is constructed on land obtained on lease from the Government, a local authority or any authority referred to in clause (*20A*) of section 10 of the Income-tax Act, and the Government or any such authority is, under the terms of the lease, entitled to claim and recover a specified part of the unearned increase in the value of the land at the time of the transfer of the property, the value of such property as determined under rule 3 shall be reduced by the amount so liable to be claimed and recovered or by an amount equal to fifty per cent. of the value of the property as so determined, whichever is less, as if the property had been transferred on the valuation date.

Explanation.—For the purpose of this rule, "unearned increase" means the difference between the value of such land on the valuation date as determined by the Government or such authority for the purpose of calculating such increase and the amount of the premium paid or payable to the Government or such authority for the lease of the land.

Rule 3 not to apply in certain cases.

8. Nothing contained in rule 3 shall apply,—

(*a*) where, having regard to the facts and circumstances of the case, the Assessing Officer, with the previous approval of the Deputy Commissioner, is of opinion that it is not practicable to apply the provisions of the said rule to such a case; or

(*b*) where the difference between the unbuilt area and the specified area exceeds twenty per cent. of the aggregate area; or

(*c*) where the property is constructed on leasehold land and the lease expires within a period not exceeding fifteen years from the relevant valuation date and the deed of lease does not give an option to the lessee for the renwal of the lease,

and in any case referred to in clause (*a*) or clause (*b*) or clause (*c*), the value of the property shall be determined in the manner laid down in rule 20.

PART C

Shares in or debentures of companies

Quoted shares and debentures of companies.

9. The value of an equity share or a preference share in any company or a debenture of any company which is a quoted share or a quoted debenture shall be taken as the value quoted in respect of such share or debenture on the valuation date or where there is no such quotation on the valuation date, the quotation on the date closest to the valuation date and immediately preceding such date.

Unquoted preference shares.

10. (*1*) Subject to the provisions of sub-rule (*2*), the value of unquoted preference share in any company shall—

(*a*) where the preference share is issued before the valuation date at a rate of dividend of not less than eight per cent., be the paid-up value of such share; and

(*b*) where the preference share is issued before the valuation date at a rate of dividend of less than eight per cent., be the adjusted paid-up value of such share.

(*2*) Where no dividend has been paid in respect of an unquoted preference share by any company continuously for not less than three accounting years ending on the valuation date or, in a case where the accounting year of the company does not end on the valuation date, for not less than three continuous accounting years ending on a date immediately before the valuation date, the paid-up value or, as the case may be, the adjusted paid-up value shall be reduced—

(*a*) in the case of a non-cumulative preference share, as indicated in the Table below:—

TABLE

Number of accounting years ending on the valvation date or, in a case where the accounting year does not end on the valuation date, the number of accounting years ending on a date immediately preceding the valuation date, for which no dividend has been paid.	Rate of reduction
(1)	(2)
Three year.	10 per cent. of the paid-up value or the adjusted paid-up value, as the case may be ;
Four years	20 —do—
Five years	30 —do—
Six years and above	40 —do—

(*b*) in the case of a cumulative preference share, by one half of the rates specified in the aforesaid Table.

Explanation.—For the purposes of this rule, "adjusted paid-up value", in relation to a preference share, means an amount which bears to the paid-up value of the preference share the same proportion as the stipulated rate of dividend [being the rate of dividend on the preference share

specified in the terms of issue of such share, and in a case where such dividend is required to be increased under the provisions of section 3 of the Preference Shares (Regulation of Dividends) Act, 1960, the rate of dividend as so increased] on such share bears to the rate of eight per cent. 63 of 1960.

11. (*1*) The value of an unquoted equity share in any company, other than an investment company, shall be determined in the manner set out in sub-rule (*2*)

Unquoted equity shares in companies other than investment companies.

(*2*) The value of all the liabilities as shown in the balance-sheet of such company shall be deducted from the value of all its assets shown in that balance-sheet; the net amount so arrived at shall be divided by the total amount of its paid-up equity share capital as shown in the balance-sheet; the result multiplied by the paid-up value of each equity share shall be the break-up value of each unquoted equity share, and an amount equal to eighty per cent. of the break-up value so determined shall be the value of the unquoted equity share for the purposes of this Act.

(*3*) For the purposes of sub-rule (*2*),—

(*a*) the following amounts shown as assets in the balance-sheet shall not be treated as assets, namely:—

(*i*) any amount paid as advance-tax under the Income-tax Act;

(*ii*) any amount shown in the balance-sheet including the debit balance of the profit and loss account or the profit and loss appropriation account which does not represent the value of any asset;

(*b*) the following amounts shown as liabilities in the balance-sheet shall not be treated as liabilities, namely:—

(*i*) the paid-up capital in respect of equity shares;

(*ii*) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the valuation date at a general body meeting of the company;

(*iii*) reserves, by whatever name called, other than those set apart towards depreciation;

(*iv*) credit balance of the profit and loss account;

(*v*) any amount representing provision for taxation, other than the amount referred to in sub-clause (*i*) of clause (*a*) to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

(*vi*) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares.

Explanation.— For the purposes of this rule, "balance-sheet", in relation to any company, means the balance-sheet of such company (including the Notes annexed thereto and forming part of the accounts) as drawn up on the valuation date and, where there is no such balance-sheet, the balance-sheet drawn up on a date immediately preceding the valuation date, and, in the absence of both, the balance-sheet drawn up on a date immediately after the valuation date.

Unquoted equity shares in investment companies.

12. (1) Subject to rule 13, the value of an unquoted equity share in an investment company shall be determined in the manner specified in sub-rule (2).

(2) The value of all the liabilities as shown in the balance-sheet of such company shall be deducted from the value of all its assets shown in that balance-sheet; the net amount so arrived at shall be divided by the total paid-up equity share capital of the company as shown in the balance-sheet, and the result multiplied by the paid-up value of each equity share shall be the value of the unquoted equity share in that investment company for the purposes of this Act.

(3) For the purposes of sub-rule (2), the value of an asset disclosed in the balance-sheet of the company shall be taken to be its value determined in accordance with the rules as applicable to that particular asset and, in the absence of any such rule, the value of such asset shall be its value as determined under rule 20.

(4) For the purposes of this rule,—

(a) "balance-sheet" has the same meaning as in rule 11;

(b) the amounts referred to in sub-rule (3) of rule 11 shall not be treated as assets or liabilities.

(5) For the purpose of facilitating the valuation of unquoted equity shares under this rule and rule 13, the company concerned shall have such valuation made by its auditors appointed under section 224 of the Companies Act, 1956, and a certificate of the auditors relating to such valuation in the prescribed form shall be furnished to the Assessing Officer in the case of the company; and the valuation made by the auditors shall be taken into account in the assessments of the shareholders of the company.

1 of 1956.

Unquoted equity shares in interlocked companies.

13. (1) The value of an unquoted equity share in one of the two interlocked companies held by the other interlocked company for the purposes of rule 12 shall be equal to the paid-up value of such share or the value determined under sub-rule (2), whichever is higher.

(2) For the purpose of sub-rule (1), the aggregate value of all the equity shares in an interlocked company shall be arrived at by multiplying the maintainable profits of such company by—

(a) the fraction $\frac{100}{85}$, in a case where the gross total income of the company consists, to the extent of not less than 51 per cent. of income chargeable under the head "Income from house property"; or

(b) the fraction $\frac{100}{10}$, in the case of any other interlocked company,

and the resultant amount divided by the number of such equity shares shall be the value of such an equity share in such company.

(3) The maintainable profits of the company, for the purpose of sub-rule (2), shall be computed in the following manner, namely:—

(a) the book profits of the company for the five accounting years of the company immediately preceding the valuation date shall first be ascertained;

(*b*) adjustments shall be made to the book profits for each of the said five years for all non-recurring and extraordinary items of income and expenditure and losses;

(*c*) adjustments shall be made to the book profits for expenditure which is not of a revenue nature but is debited in the accounts and for receipts which are in the nature of revenue receipts but are not accounted for in the profit and loss account;

(*d*) any development rebate or investment allowance debited in the books of account shall be added back to the book profits;

(*e*) the tax liability of the company on the book profits, arrived at after the adjustments at items (*a*), (*b*), (*c*) and (*d*), shall be deducted from such book profits;

(*f*) amounts required for paying dividends on preference shares or shares with prior rights shall be deducted from such book profits;

(*g*) the aggregate of the book profits for the five accounting years so arrived at, divided by 5, shall be the maintainable profits of the company.

Explanation.—For the purposes of this rule, "interlocked companies" means any two investment companies each of which holds shares in the other company.

PART D

Assets of business

Global valuation of assets of business.

14. (*1*) Where the assessee is carrying on a business for which accounts are maintained by him regularly, the net value of the assets of the business as a whole, having regard to the balance-sheet of such business on the valuation date after adjustments specified in sub-rule (2) shall be taken as the value of such assets for the purposes of this Act.

(2) For the purposes of sub-rule (*1*)—

(*a*) the value of any asset as disclosed in the balance-sheet shall be taken to be,—

(*i*) in the case of an asset on which depreciation is admissible, its written-down value;

(*ii*) in the case of an asset on which no depreciation is admissible, its book value;

(*iii*) in the case of closing stock, its value adopted for the purposes of assessment under the Income-tax Act for the previous year relevant to the corresponding assessment year;

(*b*) where the value of any of the assets referred to in clause (*a*), determined in accordance with the provisions of this Schedule as applicable to that particular asset or if there are no such provisions, determined in accordance with rule 20 exceeds the value arrived at in accordance with clause (*a*) by more than 20 per cent, then the higher value shall be taken to be the value of that asset;

(*c*) the value of an asset not disclosed in the balance-sheet, shall be taken to be the value determined in accordance with the provisions of this Schedule as applicable to that asset;

(*d*) the value of the following assets which are disclosed in the balance-sheet shall not be taken into account, namely:—

(*i*) any amount paid as advance tax under the Income-tax Act;

(*ii*) the debt due to the assessee according to the balance-sheet or part thereof which has been allowed as a deduction under clause (*vii*) of sub-section (*1*) of section 36 of the Income-tax Act, for the purposes of assessment for the previous year relevant to the corresponding assessment year under that Act;

(*iii*) the value of any asset in respect of which wealth-tax is not payable under this Act;

(*iv*) any amount shown in the balance-sheet including the debit balance in the profit and loss account or profit and loss appropriation account which does not represent the value of any asset;

(*v*) any asset shown in the balance-sheet not really pertaining to the business;

(*e*) the following amounts shown as liabilities in the balance-sheet shall not be taken into account, namely:—

(*i*) capital employed in the business other than that attributable to borrowed money;

(*ii*) reserves by whatever name called;

(*iii*) any provision made for meeting any future or contingent liability;

(*iv*) any liability shown in the balance-sheet not really pertaining to the business;

(*v*) any debt owed by the assessee to the extent to which it has been specifically utilised for acquiring an asset in respect of which wealth-tax is not payable under this Act:

Provided that where it is not possible to calculate the amount of debt so utilised, it shall be taken as the amount which bears the same proportion to the total of the debts owed by the assessee as the value of that asset bears to the total value of the assets of the business.

Explanation.—Provision for any purpose other than taxation shall be treated as a reserve.

PART E

Interest in firm or association of persons

Valuation of interest in firm or association of persons.

15. The value of the interest of a person in a firm of which he is a partner or in an association of persons of which he is a member shall be determined in the manner provided in rule 16.

Computation of net wealth of the firm or association and its allocation amongst the partners or members.

16. The net wealth of the firm or association of persons on the valuation date shall first be determined as if it were the assessee and, thereafter,—

(*i*) that portion of the net wealth of the firm or association as is equal to the amount of its capital shall be allocated among the partners or members in the proportion in which capital has been contributed by them;

(*ii*) the residue of the net wealth of the firm or association shall be allocated amongst the partners or members in accordance with the agreement of partnership or association for the distribution of assets in the event of dissolution of the firm or association or, in the absence of such agreement, in the proportion in which the partners or members are entitled to share the profits,

and the sum total of amounts so allocated to a partner or member under clause (*i*) and clause (*ii*) shall be treated as the value of the interest of that partner or member in the firm or association:

Provided that in determining the net wealth of the firm or association for the purposes of this rule, no account shall be taken of the exemptions in sub-sections (*1*) and (*1A*) of section 5.

Explanation.—For the purposes of this rule,—

(*a*) where the net wealth of the firm or association computed in accordance with this rule includes the value of any assets located outside India, the value of the interest of any partner or member in the assets located in India shall be determined having regard to the proportion which the value of assets located in India diminished by the debts relating to those assets bears to the net wealth of the firm or association;

(*b*) where the net wealth of the firm or association computed in accordance with this rule includes the value of any assets which are exempt from inclusion in the net wealth under sub-sections (*1*) and (*1A*) of section 5, the value of the interest of a partner or member shall be deemed to include the value of his proportionate share in the said assets and, the provisions of sub-sections (*1*) and (*1A*) of section 5 shall apply to him accordingly;

(*c*) where the net wealth of the firm or association computed in accordance with this rule includes the value of any assets referred to in sub-section (*2*) of section 5, the value of the interest of a partner or member shall be deemed to include the value of his proportionate share in the said assets, and the provisions of sub-section (*2*) of section 5 shall apply to him accordingly.

PART F

LIFE INTEREST

Valuation of life interest.

17. (*1*) For the purposes of sub-section (*1*) of section 7, the value of the life interest of an assessee shall be arrived at by multiplying the average annual income that accrued to the assessee from the life interest by the fraction $\frac{1}{P+d}$ minus 1, where 'P' represents the annual premium for a whole life insurance without profits on the life of the

life tenant for unit sum assured as specified in the Appendix to these rules, and 'd' is equal to $\frac{i}{1+}$ 'i' being the rate of interest.

Explanation.—In this rule,—

(*a*) "life tenant" means a person for the duration of whose life the life interest is to subsist;

(*b*) "average annual income" means the average of the gross income derived by the assessee from the life interest during each year of the period ending on the valuation date, reduced by the average of the expenses incurred on the collection of such income in each of those years:

Provided that the amount of the reduction for such expenses shall, in no case, exceed five per cent. of the average of the annual gross income:

Provided further that in case the income so derived is for a period exceeding three years, only that income derived during the three years ending on the valuation date shall be taken into account;

(*c*) the rate of interest shall be 6½ per cent. per annum.

(*2*) Notwithstanding anything contained in sub-rule (*1*),—

(*a*) the Assessing Officer may, if he is of the opinion that in the case of the life tenant, a life insurance company would not take the risk of insuring his life at the normal premium rates in force but would demand a higher premium, vary the valuation suitably;

(*b*) the value of the life interest so determined shall, in no case, exceed the value as on the valuation date as determined under this Schedule, of the corpus of the trust from which the life interest is derived.

PART G

Jewellery

Valuation of jewellery.

18. The value of jewellery shall be—

(*a*) where the value declared by the assessee in the return of net wealth does not exceed rupees five lakhs, and the return is supported by a statement in the prescribed form, the value so declared in the return;

(*b*) in any other case, subject to rule 19, the price which in the opinion of the Valuation Officer, on a reference made to him under section 16A, the jewellery would fetch if sold in the open market on the valuation date.

Adjustment in value of jewellery for subsequent assessment years.

19. The value of any jewellery determined in accordance with clause (b) of rule 18 for any assessment year (hereinafter referred to as the first assessment year), shall be taken to be the value of such jewellery for the subsequent four assessment years, subject to the following adjustments, namely:—

(*a*) where the jewellery includes gold or silver or any alloy containing gold or silver, the value of such gold or silver or such

alloy as on the valuation date relevant to the concerned subsequent assessment year shall be substituted for the value of such gold or silver or alloy on the valuation date relevant to the first assessment year;

(*b*) where any jewellery or part of jewellery is sold or otherwise disposed of by the assessee, or any jewellery or part of jewellery is acquired by him, on or before the valuation date relevant to the concerned subsequent year, the value of the jewellery determined for the first assessment year shall be reduced or increased, as the case may be, and the value as so reduced or increased shall be the value of the jewellery for such subsequent assessment year.

PART H

Residuary

Valuation of assets in other cases.

20. (*1*) The value of any asset, other than cash, being an asset which is not covered by rules 3 to 19, for the purposes of this Act, shall be estimated to be the price which, in the opinion of the Assessing Officer, it would fetch if sold in the open market on the valuation date.

(*2*) Notwithstanding anything contained in sub-rule (*1*), where the valuation of any asset referred to in that sub-rule is referred by the Assessing Officer to the Valuation Officer under section 16A, the value of such asset shall be estimated to be the price which, in the opinion of the Valuation Officer, it would fetch if sold in the open market on the valuation date.

(*3*) Where the value of any asset cannot be estimated under this rule because it is not saleable in the open market, the value shall be determined in accordance with such guidelines or principles as may be specified by the Board from time to time by general or special order.

Restrictive covenants to be ignored in determining market value.

21. For the removal of doubts, it is hereby declared that the price or other consideration for which any property may be acquired by or transferred to any person under the terms of a deed of trust or through or under any restrictive covenant in any instrument of transfer shall be ignored for the purposes of determining under any provision of this Schedule, the price such property would fetch if sold in the open market on the valuation date.

[APPENDIX]

(*See* rule 17)

TABLE $\left(\frac{1}{P + d} - 1\right)$

Age nearer birth-day	Premium for unit sum assured	$\left(\frac{1}{P+d} - 1\right)$ Value of life interest of Rupee 1 per annum at 6-1/2 % rate of interest
1	2	3
0	0.02906	10.100
1	0.01590	11.999

1	2	3
2	0.01295	12.517
3	0.01162	12 765
4	0.01095	12.893
5	0.01065	12.951
6	0.01058	12.965
7	0 01063	12.955
8	9 01076	12.930
9	0.01095	12.893
10	0.01117	12.850
11	0.01142	12.803
12	0.01169	12.751
13	0.01197	12.699
14	0.01226	12.644
15	0.01257	12.587
16	0.01286	12.534
17	0.01319	12.473
18	0.01350	12.417
19	0.01387	12.351
20	0.01431	12 273
21	0.01469	12 207
22	0.01512	12 132
23	0.01556	12.057
24	0.01606	11.972
25	0.01656	11.888
26	0.01706	11.806
27	0.01762	11.715
28	0.01825	11.614
29	0.01894	11.505
30	0.01962	11.399
31	0.02037	11.285
32	0.02112	11.173
33	0.02194	11.053
34	0 02281	10 927
35	0.02369	10.804
36	0.02462	10.675
37	0.02562	10.541
38	0.02669	10.400
39	0.02787	10.249
40	0.02912	10.093

1	2	3
41	0.03044	9.932
42	0.03181	9.771
43	0.03325	9.607
44	0.03475	9.441
45	0.03637	9.267
46	0.03806	9.092
47	0.03987	8.911
48	0.04181	8.724
49	0.04387	8.533
50	0.04612	8.333
51	0.04850	8.130
52	0.05100	7.926
53	0.05362	7.722
54	0.05637	7.518
55	0.05931	7.310
56	0.06244	7.099
57	0.06575	6.888
58	0.06925	6.676
59	0.07294	6.464
60	0.07681	6.255
61	0.08167	6.008
62	0.08589	5.806
63	0.09025	5.610
64	0.09475	5.419
65	0.09938	5.234
66	0.10415	5.054
67	0.10907	4.879
68	0.11414	4.709
69	0.11933	4.543
70	0.12483	4.380
71	0.13054	4.220
72	0.13652	4.062
73	0.14278	3.907
74	0.14936	3.753
75	0.15627	3.602
76	0.16356	3.453
77	0.17125	3.305
78	0.17937	3.160
79	0.18796	3.016
80	0.19706	2.875

CHAPTER IV

AMENDMENTS TO THE GIFT-TAX ACT, 1958

18 of 1958.

79. In section 3 of the Gift-tax Act, 1958 (hereafter in this Chapter referred to as the Gift-tax Act), in sub-section (*1*), for the words "the Schedule", the word and figure "Schedule I" shall be substituted. Amendment of section 3.

80. In section 5 of the Gift-tax Act, in sub-section (*1*), after clause (*iiid*), the following clause shall be inserted, namely:— Amendment of section 5.

'(*iiie*) being an individual who is a non-resident Indian, to any relative, of property in the form of the bonds specified under sub-clause (*iid*) of clause (*15*) of section 10 of the Income-tax Act:

Provided that the exemption conferred by this clause shall be available only if the gift of such bonds is made after a period of three years from the date of their purchase:

Provided further that where an individual, who is a non-resident Indian in any previous year in which the bonds are acquired, becomes a resident in India in any subsequent year, the provisions of this clause shall apply in respect of the gifts of property referred to in this clause in such subsequent year or any year thereafter.

Explanation.—For the purposes of this clause, the expressions—

(*a*) "relative" shall have the meaning assigned to it in clause (*41*) of section 2 of the Income-tax Act;

(*b*) "non-resident Indian" shall have the meaning assigned to it in clause (*e*) of section 115C of the Income-tax Act;'.

81. For section 6 of the Gift-tax Act, the following section shall be substituted, namely:— Substitution of new section for section 6.

"6. (*1*) Subject to the provisions of sub-section (*2*), the value of any property, other than cash, transferred by way of gift shall, for the purpose of this Act, be its value as on the date on which the gift was made and shall be determined in the manner laid down in Schedule II. Value of gifts, how determined.

(*2*) Where a person makes a gift which is not revocable for a specified period, the value of the property gifted shall be the capitalised value of the income from such property during the period for which the gift is not revocable.". Amendment of section 10.

4 of 1988.

82. In section 10 of the Gift-tax Act [as substituted by section 164 of the Direct Tax Laws (Amendment) Act, 1987], in sub-section (*2*), in clause (*5*), for the brackets and figure "(*5*)", the brackets and figure "(*4*)" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1988. Amendment of section 15.

4 of 1988.

83. In section 15 of the Gift-tax Act [as substituted by section 170 of the Direct Tax Laws (Amendment) Act, 1987],—

(*a*) in sub-section (*1*), in clause (*a*), after the proviso, the following proviso shall be inserted, namely:—

"Provided further that an intimation for any tax or interest due under this clause shall not be sent after the expiry of two

years from the end of the assessment year in which the gifts were first assessable.";

(*b*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) (*a*) Where in the case of any person, the taxable gift, as a result of the adjustments made under the proviso to clause (*a*) of sub-section (*1*), exceeds the taxable gift declared in the return by any amount, the Assessing Officer shall,—

(*i*) further increase the amount of tax payable under sub-section (*1*) by an additional gift-tax calculated at the rate of twenty per cent. of the tax payable on such excess amount and specify the additional gift-tax in the intimation to be sent under sub-clause (*i*) of clause (*a*) of sub-section (*1*);

(*ii*) where any refund is due under sub-section (*1*), reduce the amount of such refund by an amount equivalent to the additional gift-tax calculated under sub-clause (*i*).

(*b*) Where as a result of an order under section 22 or section 23 or section 24 or section 26 or section 28 or section 34, the amount on which additional gift-tax is payable under clause (*a*) has been increased or reduced, as the case may be, the additional gift-tax shall be increased or reduced accordingly, and,—

(*i*) in a case where the additional gift-tax is increased, the Assessing Officer shall serve on the assessee a notice of demand under section 31;

(*ii*) in a case where the additional gift-tax is reduced, the excess amount paid, if any, shall be refunded.

Explanation.—For the purposes of this sub-section, "tax payable on such excess amount" means the difference between the tax on the taxable gift and the tax that would have been chargeable had such taxable gift been reduced by the amount of adjustments.";

(*c*) in sub-section (*6*), in the opening portion, after the words "under this Act,", the words and figures "where under the provisions of section 6 read with Schedule II, the fair market value of any property transferred by way of gift is to be taken into account in such assessment," shall be inserted.

Amendment of section 16.

84. In section 16 of the Gift-tax Act, in sub-section (*1*) [as substituted by clause (*a*) of section 171 of the Direct Tax Laws (Amendment) Act, 1987], 4 of 1988.—

(*a*) for the words ", for reasons to be recorded by him in writing, is of the opinion", the words "has reasons to believe" shall be substituted;

(*b*) after the proviso, the following proviso shall be inserted, namely:—

"Provided further that the Assessing Officer shall, before issuing any notice under this sub-section, record his reasons for doing so.".

Amendment of section 16B.

85. In section 16B of the Gift-tax Act [as inserted by section 173 of the Direct Tax Laws (Amendment) Act, 1987],— 4 of 1988.

(*a*) in sub-section (*1*),—

(*i*) after the words "taxable gifts as determined", the words, brackets and figures "under sub-section (*1*) of section 15 or" shall be inserted;

(*ii*) for *Explanation* 1, the following *Explanation* shall be substituted, namely:—

'*Explanation* 1.—In this sub-section, "tax payable on the taxable gifts as determined under sub-section (*1*) of section 15" shall not include the additional gift-tax, if any, payable under section 15.';

(*iii*) after *Explanation* 2, the following *Explanation* shall be inserted, namely:—

'*Explanation* 3.—In this sub-section, "tax payable on the taxable gifts as determined under sub-section (*1*) of section 15 or on regular assessment" shall, for the purposes of computing the interest payable under section 14B, be deemed to be tax payable on the taxable gifts as declared in the return.';

(*b*) in sub-section (*3*),—

(*i*) after the words, brackets and figures "under sub-section (*1*) of section 16 issued", the words, brackets and figures "after the determination of taxable gifts under sub-section (*1*) of section 15 or" shall be inserted;

(*ii*) after the words "taxable gifts as determined", the words, brackets and figures "under sub-section (*1*) of section 15 or" shall be inserted;

(*iii*) the *Explanation* shall be omitted.

Amendment of section 17.

86. In section 17 of the Gift-tax Act [as it stood immediately before its substitution by section 174 of the Direct Tax Laws (Amendment) Act, 1987],— 4 of 1988.

(*a*) in sub-section (*1*),—

(*i*) clause (*a*) shall be omitted;

(*ii*) clause (*i*) shall be omitted;

(*iii*) for clause (*ii*), the following clause shall be substituted, namely:—

"(*ii*) in the cases referred to in clause (*b*), in addition to the amount of gift-tax payable by him, a sum which shall

not be less than one thousand rupees but which may extend to twenty-five thousand rupees for each such failure;";

(*iv*) for the proviso, the following proviso shall be substituted, namely:—

"Provided that in the cases referred to in clause (*b*), no penalty shall be imposable if the person proves that there was a reasonable cause for the failure referred to in that clause.";

(*v*) the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—Where any adjustment is made in the taxable gifts declared in the return under the proviso to clause (*a*) of sub-section (*1*) of section 15 and additional gift-tax charged under that section, the provisions of this sub-section shall not apply in relation to the adjustments so made.";

(*b*) for sub-section (*3*), the following sub-section shall be substituted, namely:—

"(*3*) No order imposing a penalty under sub-section (*1*) shall be made,—

(*i*) by the Income-tax Officer, where the penalty exceeds ten thousand rupees;

(*ii*) by the Assistant Commissioner, where the penalty exceeds twenty thousand rupees,

except with the prior approval of the Deputy Commissioner.";

(*c*) after sub-section (*4*), the following sub-sections shall be inserted, namely:—

"(*5*) No order imposing a penalty under this section shall be passed—

(*i*) in a case where the assessment to which the proceedings for imposition of penalty relate is the subject-matter of an appeal to the Deputy Commissioner (Appeals) or Commissioner (Appeals) under section 22 or an appeal to the Appellate Tribunal under sub-section (*2*) of section 23, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which the order of the Deputy Commissioner (Appeals) or the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Chief Commissioner or Commissioner, whichever is later;

(*ii*) in a case where the relevant assessment is the subject-matter of revision under sub-section (*2*) of section 24, after the expiry of six months from the end of the month in which such order of revision is passed;

(*iii*) in any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.

Explanation.—In computing the period of limitation for the purposes of this section,—

(*i*) the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 38; and

(*ii*) any period during which a proceeding under this section for the levy of penalty is stayed by an order or injunction of any court,

shall be excluded.

(6) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1988 shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.".

Substitution of new section for section 17A.

87. For section 17A of the Gift-tax Act [as it stood immediately before its substitution by section 174 of the Direct Tax Laws (Amendment) Act, 1987], the following section shall be substituted, namely:—

4 of 1988

Penalty for failure to answer questions, sign statements, furnish information, allow inspection, etc.

'17A. (1) If a person,—

(*a*) being legally bound to state the truth of any matter touching the subject of his assessment, refuses to answer any question put to him by a gift-tax authority in the exercise of his powers under this Act; or

(*b*) refuses to sign any statement made by him in the course of any proceedings under this Act, which a gift-tax authority may legally require him to sign; or

(*c*) to whom a summons is issued under sub-section (*1*) of section 36, either to attend to give evidence or produce books of account or other documents at a certain place and time, omits to attend or produce the books of account or documents at the place and time,

he shall pay, by way of penalty, a sum which shall not be less than five hundred rupees but which may extend to ten thousand rupees for each such default or failure:

Provided that no penalty shall be imposable under clause (*c*) if the person proves that there was reasonable cause for the said failure.

(2) If a person fails to furnish in due time any statement or information which such person is bound to furnish to the Assessing Officer under section 37, he shall pay, by way of penalty, a sum which shall not be less than one hundred rupees but which may extend to two hundred rupees for every day during which the failure continues:

Provided that no penalty shall be imposable under this sub-section if the person proves that there was reasonable cause for the said failure.

(3) Any penalty imposable under sub-section (1) or sub-section (2) shall be imposed,—

(a) in a case where the contravention, failure or default in respect of which such penalty is imposable occurs in the course of any proceeding before a gift-tax authority not lower in rank than a Deputy Director or a Deputy Commissioner, by such gift-tax authority;

(b) in any other case, by the Deputy Director or the Deputy Commissioner.

(4) No order under this section shall be passed by any gift-tax authority referred to in sub-section (3) unless the person on whom penalty is proposed to be imposed has been heard or has been given a reasonable opportunity of being heard in the matter by such authority.

Explanation.—In this section, "gift-tax authority" includes a Director General, Director, Deputy Director, Assistant Director or Valuation Officer while exercising the powers vested in a court under the Code of Civil Procedure, 1908, when trying a suit in respect of the matters specified in sub-section (1) of section 36.'. 5 of 1908.

Amendment of section 22.

88. In section 22 of the Gift-tax Act [as amended by section 176 of the Direct Tax Laws (Amendment) Act, 1987]— 4 of 1988.

(i) in sub-section (1), in clause (d), the words, figures and letters "as it stood immediately before the 1st day of April, 1989 or under section 17 as amended by the Direct Tax Laws (Amendment) Act, 1987" occurring at the end shall be omitted; 4 of 1988.

(ii) in sub-section (1A), for clause (c), the following clause shall be substituted, namely:—

"(c) objecting to any penalty imposed under sub-section (1) of section 17 with the previous approval of the Deputy Commissioner as specified in sub-section (3) of that section;".

Amendment of section 25.

89. In section 25 of the Gift-tax Act, in sub-section (1), after the word and figures "section 24", the words, figures and letter "or an order passed by the Director General or Director under section 17A" shall be inserted.

Amendment of section 33A.

90. In section 33A of the Gift-tax Act,—

(a) in sub-section (1), in the proviso [as inserted by clause (i) of section 180 of the Direct Tax Laws (Amendment) Act, 1987], in 4 of 1988.

clause (*b*), for the words "total income", the words "taxable gifts" shall be substituted;

4 of 1988. (*b*) in sub-section (*4B*), [as inserted by section 180 of the Direct Tax Laws (Amendment) Act, 1987],—

(*i*) in clause (*a*), for the words "Where, in pursuance of any order passed under this Act, the refund of any amount becomes due to the assessee", the words "Where refund of any amount becomes due to the assessee under this Act," shall be substituted;

(*ii*) in clause (*c*), after the words "an order under", the words, brackets and figures "sub-section (3) of section 15 or" shall be inserted.

4 of 1988. **91.** In section 34 of the Gift-tax Act [as amended by section 186 of the Direct Tax Laws (Amendment) Act, 1987], in sub-section (1), in clause (*c*), the words, figures and letter "or section 22A" shall be omitted. Amendment of section 34.

92. After section 35D of the Gift-tax Act, the following section shall be inserted, namely:— Insertion of new section 35E.

"35E. Entries in the records or other documents in the custody of a gift-tax authority shall be admitted in evidence in any proceedings for the prosecution of any person for an offence under this Act, and all such entries may be proved either by the production of the records or other documents in the custody of the gift-tax authority containing such entries, or by the production of a copy of the entries certified by the gift-tax authority having custody of the records or other documents under its signature and stating that it is a true copy of the original entries and that such original entries are contained in the records or other documents in its custody.". Proof of entries in records or documents.

93. In section 45 of the Gift-tax Act, for *Explanations* 1 and 2 [as they stood immediately before their substitution by section 184 of the 4 of 1988. Direct Tax Laws (Amendment) Act, 1987], the following *Explanation* shall be substituted, namely:— Amendment of section 45.

'*Explanation* 1.—For the purposes of clause (*b*), the term "amalgamation" shall have the meaning assigned to it in clause (*1B*) of section 2 of the Income-tax Act.'.

94. In the Gift-tax Act, the existing Schedule shall be renumbered as Schedule I and after Schedule I as so renumbered, the following Schedule shall be inserted, namely:— Insertion of new Schedule II.

"SCHEDULE II

[*See* section 6(*1*)]

Rules for determining the value of property gifted

The value of any property, other than cash, transferred by way of gift shall, for the purposes of this Act, be determined in accordance with the provisions of Schedule III to the Wealth-tax Act, which shall apply subject to the following modifications, namely:— Value of gifted property, how to be determined.

In the said Schedule,—

(*a*) references by whatever form of words to the Wealth-tax Act shall be construed as references to this Act;

(*b*) in rule 5, the reference to the year ending on the valuation date shall be construed as a reference to the previous year as defined in this Act;

(*c*) save as provided in clause (*b*), references to the valuation date shall be construed as references to the date on which the gift was made;

(*d*) reference to section 7 of the Wealth-tax Act shall be construed as references to section 6 of this Act;

(*e*) references to section 16A of the Wealth-tax Act shall be construed as references to sub-section (*6*) of section 15 of this Act.".

CHAPTER V

AMENDMENTS TO THE DIRECT TAX LAWS (AMENDMENT) ACT, 1967

Amendment of Act 4 of 1988.

95. In the Direct Tax Laws (Amendment) Act, 1987,—

(*a*) in section 3,—

(*1*) clauses (*p*) and (*s*) shall be omitted;

(*2*) in clause (*r*), after the words "shall be substituted", the words, figures and letters "and shall be deemed to have been substituted with effect from the 1st day of April, 1988" shall be inserted;

(*b*) in section 6, clauses (*a*), (*k*) and (*l*) shall be omitted;

(*c*) sections 7 and 8 shall be omitted;

(*d*) in section 9, clause (*a*) shall be omitted;

(*e*) in section 10, for the figures, letters and word "35, 35B, 35C, 35CC, 35CCA and 35CCB", the figures, letters and word "35B, 35C and 35CC" shall be substituted;

(*f*) in section 13, clause (*ii*) shall be omitted;

(*g*) sections 16, 17, 18, 19, 20, 21, 24, 26 and 29 shall be omitted;

(*h*) in section 25, clauses (*a*), (*b*), (*d*) and (*e*) shall be omitted;

(*i*) in section 61,—

(*1*) clause (*a*) shall be omitted;

(*2*) in clause (*c*), the brackets, figure and letter "(*5B*)," shall be omitted;

(*j*) sections 62, 63, 66, 67, 68, 69, 71, 72, 100, 101 and 122 shall be omitted;

(*k*) in section 64,—

(*1*) clause (*a*) shall be omitted;

(*2*) in clause (*b*), the words, brackets and figure "sub-sections (*2*) and (*3*), and" shall be omitted;

(*l*) in section 88, clause (*b*) shall be omitted;

(*m*) section 106 shall be omitted;

(*n*) in section 124,—

(*1*) clauses (*3*), (*6*), (*8*), (*9*), (*10*), (*11*), (*13*), (*14*), (*16*), (*19*) and (*22*) shall be omitted;

(*2*) in clause (*5*), sub-clause (*i*) shall be omitted;

(*3*) in clause (*12*), for the words "Income-tax Officer", the words "Assessing Officer" shall be substituted;

(*4*) in clause (*24*), for the words "Income-tax Officer", the words "Assessing Officer" shall be substituted;

(*o*) in section 126, clauses (*5*), (*6*), (*11*), (*13*), (*23*) and (*28*) shall be omitted;

(*p*) sections 142, 143, 144, 147, 174, 175 and 177 shall be omitted;

(*q*) in section 149, in clause (a), after the words "shall be substituted", the words, figures and letters "and shall be deemed to have been substituted with effect from the 1st day of April, 1988" shall be inserted;

(*r*) in section 160, clauses (*1*) and (*2*) shall be omitted;

(*s*) in section 179, in clause (*a*), after the words "shall be substituted", the words, figures and letters "and shall be deemed to have been substituted with effect from the 1st day of April, 1988" shall be inserted;

(*t*) in section 184, clauses (*c*) and (*d*) shall be omitted;

(*u*) in section 186, clause (*2*) shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The Direct Tax Laws (Amendment) Bill, 1987 introduced and passed by Parliament in the Winter Session of 1987, was preceded by a Discussion Paper on direct tax laws presented to Parliament in August, 1986. The proposals incorporated in the Bill were framed in the light of further discussions and consultations among experts and the public after the presentation of the Discussion Paper. The said Bill was passed by both the Houses and received the assent of the President on 24th January, 1988 and was enacted as Act 4 of 1988.

2. After the enactment of the Direct Tax Laws (Amendment) Act, 1987, a large number of representations were received from experts, concerned associations, Chambers of Commerce and other tax payers regarding some provisions in the Act. The following, *inter alia*, were the main points made in these representations, namely:—

(i) the proposed system of assessment of partnership firms is harsh in respect of lower bracket of income, as such firms, subject to certain deductions, will henceforth be taxed at the maximum marginal rate. Further, the definition of whole-time working partner as introduced by the Direct Tax Laws (Amendment) Act, 1987 and certain other provisions will result in hardship.

(ii) the levy of additional tax at a flat rate of thirty per cent, would be unfair in cases of genuine doubts regarding taxability of certain receipts and that the provision relating to levy of additional tax should be made appealable;

(iii) the new provisions relating to charitable trusts, voluntary agencies and institutions carrying on scientific research, may result in hardship;

(iv) the new Act has introduced unfettered discretion regarding reopening of assessments.

3. In response to the representations received, the then Finance Minister gave an assurance in the Lok Sabha, while presenting the Budget for the financial year 1988-89 (para 94 of Part B of the Budget Speech), that a further Amendment Bill will be introduced which would take care of genuine grievances pointed out in the representations received. He mentioned four areas where amendments relating to the provisions introduced by the Direct Tax Laws (Amendment) Act, 1987 could be considered. These were:—

(i) reopening of assessments;

(ii) assessment of religious and charitable institutions and trusts as also scientific research associations;

(iii) levy of additional tax; and

(iv) assessment of the income of the firms and partners.

4. Subsequently, during the course of discussion on the Finance Bill, in the Lok Sabha on 27th April, 1988 and the Rajya Sabha on 5th May, 1988, the Finance Minister made statements announcing Government's decision to give certain tax concessions and incentives. These, *inter alia,* relate to reintroduction of investment allowance as an option to the existing Investment Deposit Scheme, complete exemption in respect of export profits by taking these out of the purview of section 115J, exclusion of companies engaged in generation or distribution of electric power from the purview of section 115J, introduction of certain measures for encouragement of tourism for augmenting foreign exchange resources.

5. After the Budget Session of 1988, certain tax concessions have also been agreed to for the promotion of the off-shore fund launched by the State Bank of India and for the non-repatriable NRI Bonds. Tax concessions are also to be given in respect of the technical know-how provided to certain projects connected with the security of India.

6. Further, amendments in some of the provisions were necessary to set right certain anomalies and also make consequential changes in some of the provisions of the various direct tax laws as amended by the Direct Tax Laws (Amendment) Act, 1987. Amendments are also required to incorporate the rules for valuation of assets in the Wealth-tax Act so as to provide certainty in the matter of assessment and reducing litigation on this account.

7. It is, therefore, proposed to amend the Income-tax Act, 1961, the Wealth-tax Act, 1957, the Gift-tax Act, 1958 and the Direct Tax Laws (Amendment) Act, 1987, to achieve mainly the following objects, namely:—

(i) to withdraw the amendments made in the Income-tax Act for introducing a new scheme of assessment of firms and partners and to restore the old provisions in this regard;

(ii) to withdraw the amendments made in the Income-tax Act for introducing a new scheme of assessment of charitable or religious trusts, institutions or funds and to restore the old provisions in this regard;

(iii) to restore the old provisions of sections 35, 35CCA and 35CCB relating to deductions on account of scientific research, rural development programmes and programmes of conservation of natural resources;

(iv) to withdraw the provisions relating to levy of additional income-tax, additional wealth-tax and additional gift-tax and to withdraw the provisions relating to advance ruling in the said Acts and to restore the old penal provisions in this regard in the said Acts.

8. The Notes on clauses explain in detail the provisions of the Bill.

9. The Bill seeks to achieve the above objects.

NEW DELHI;
The 5th December, 1988

S. B. CHAVAN.

Notes on Clauses

Clause 2 seeks to amend section 2 of the Income-tax Act.

Sub-clause (a) seeks to amend clause (24) of section 2 which relates to the definition of the term "income"—

(i) by substituting references to clause (21), clause (23) and sub-clauses (iv) and (v) of clause (23C) for the existing reference to section 80F;

(ii) by extending the scope of the term "income" to include—

(a) any special allowance or benefit specifically granted to the assessee to meet his expenses wholly necessarily and exclusively for the performance of his duties; and

(b) any allowance granted to the assessee either to meet his personal expenses at the place where he performs his duties or compensate him for the increased cost of living. This amendment shall be effective and shall be deemed to have been effective from 1st April, 1962 and will, accordingly, apply in relation to the assessment year 1962-63 and subsequent years.

Sub-clause (b) seeks to amend clause (25) defining Income-tax Officer so as to omit the reference to sub-section (1) of section 117.

Sub-clause (c) seeks to amend clause (37A) [as amended by clause (o) of section 3 of the Direct Tax Laws (Amendment) Act, 1987] relating to the definition of "rate or rates in force".

Under the proposed amendments, references to,—

(a) section 167A in sub-clause (i) of the said clause are being omitted consequent upon the omission of that section relating to charge of tax at the maximum marginal rate in the case of firms.

(b) section 194E in sub-clause (ii) of the said clause is being omitted with effect from 1-4-1988 consequent upon the retrospective omission of that section relating to deduction of tax at source from interest and salary, etc., paid by a firm to its partners.

Clause 3 seeks to amend section 3 of the Income-tax Act relating to previous year, as substituted by section 4 of the Direct Tax Laws (Amendment) Act, 1987. Under the provisions of sub-section (2) and the proviso thereunder, it has been provided that in the case of an assessee, who has been having a previous year or years different from the financial year, the previous year relevant to the assessment year commencing on the 1st day of April, 1989 will be for a period longer than twelve months.

Under the proposed amendment, second and third provisos are being inserted in sub-section (2) to provide that where a new business or profession is set up, or a source of income newly comes into existence on or

after the 1st day of April, 1987, but before the 1st day of April, 1988 and where the accounts in such a case have not been made up to the 31st day of March, 1988, the "previous year" in relation to the assessment year 1989-90 shall be reckoned from the date of setting up of the business or profession or, as the case may be, the date on which the source of income newly comes into existence to the 31st day of March, 1989.

Where the assessee has adopted one or more periods as previous year in relation to the assessment year 1988-89 for any source or sources of his income in addition to new business, profession or source of income referred to in the second proviso, the previous year in relation to the assessment year 1989-90 shall be reckoned separately in the manner specified in that sub-section in respect of each such source of income and the longer or the longest of the periods so reckoned shall be the previous year for the said assessment year.

Clause 4 seeks to amend section 10 of the Income-tax Act.

Sub-clause (a) seeks to insert a new clause (6c). The new clause provides that income by way of fees for technical services received by such foreign company, as may be notified by the Central Government, shall not form part of the total income of such company, where such income is received in pursuance of an agreement entered into with the Central Government to provide services in or outside India in projects connected with security of India.

Sub-clause (b) seeks to insert a new sub-clause (iid) in clause (15). The new sub-clause provides that interest received by a non-resident Indian from such bonds as are notified by the Central Government or by any individual owning the bonds by virtue of being a nominee or survivor of such non-resident Indian or by an individual to whom the bonds have been gifted by the non-resident Indian, will not be included in computing the total income of such individual.

The first proviso to the sub-clause seeks to provide that the bonds should have been purchased by a non-resident Indian in foreign exchange and the interest and principal received in respect of such bonds whether on their maturity or otherwise, is not allowable to be taken out of India.

The second proviso to the sub-clause seeks to provide that where the individual who is a non-resident Indian in the previous year in which the bonds are acquired, becomes a resident in India in any subsequent year the interest received from such bonds will continue to be exempt in the subsequent years as well.

The third proviso to the sub-clause seeks to provide that in a case where the bonds are encashed in a previous year prior to their maturity by an individual who is so entitled, the exemption in relation to the interest income shall not be available to such individual in the assessment year relevant to such previous year in which the bonds have been encashed.

The *Explanation* to the sub-clause seeks to define the expression "non-resident Indian".

Sub-clause (c) seeks to substitute clause (21) [as it stood immediately before its omission by clause(k) of section 6 of the Direct Tax Laws (Amendment) Act, 1987] by a new clause.

The substituted clause exempts the income of scientific research association for the time being approved under clause (ii) of sub-section (1) of section 35. However, such exemption is subject to the satisfaction of the following conditions—

(i) it has to apply its income or accumulate it for application, wholly and exclusively to the objects for which it is established. Such accumulation will be governed by the provisions of sub-section (2) and sub-section (3) of section 11 with appropriate modifications;

(ii) it has not invested or deposited its funds (other than voluntary contributions received and maintained in the form of jewellery, furniture or any other article as notified by the Board) during the previous year otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11. However, such condition will not be applicable in relation to any income of such association being profits and gains of business. This amendment shall take effect from 1st day of April, 1990 and will be relevant for assessment year 1990-91 and subsequent years.

Sub-clause (d) seeks to substitute clause (23) [as it stood immediately before its omission by clause (k) by section 6 of the Direct Tax Laws (Amendment) Act, 1987], by a new clause.

The substituted clause empowers the Central Government to notify an association or institution established in India having regard to the fact that the association or institution has as its object the control, supervision, regulation or encouragement in India of games of cricket, hockey, football, tennis or such other games or sports, as the Central Government may, by notification in the Official Gazette, specify in this behalf. The notification, however, shall at any one time have effect for not more than three assessment years (including an assessment year or years commencing before the date of issue of such notification).

However, such exemption will be subject to the satisfaction of the following conditions,—

(i) the association or institution shall make an application in the prescribed form and manner to the prescribed authority for the purpose of grant of such exemption, or continuance thereof;

(ii) the association or institution shall furnish such documents (including audited annual accounts) or information which the Central Government may consider necessary in order to satisfy the genuineness of activities of the association or institution;

(iii) the association or institution shall apply its income or accumulate it for application wholly and exclusively to the objects for which it is established. The provisions of sub-sections (2) and (3) of section 11 with certain modifications will apply to the accumulation of the income;

(iv) the institution or association shall not deposit or invest its funds (other than voluntary contributions received and maintained in the form of jewellery, furniture or any other article as notified by the Board) during the previous year otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11. Further as a saving clause it is provided that any funds invested or deposited before 1st day of April, 1989 in any form or mode other than that specified in section 11(5), shall have to be invested or deposited in the form or mode specified in section 11(5) on or before the 30th day of March, 1990.

(v) the institution or association shall not contribute any part of its income in any manner to its members except as grants to an association or institution affiliated to it.

This amendment will take effect from 1st day of April, 1990 and will be relevant for assessment year 1990-91 and subsequent years.

Sub-clause (e) seeks to substitute sub-clauses (iv) and (v) of clause (23C).

The substituted sub-clauses (iv) and (v) empower the Central Government to notify—

(a) any fund or institution established for charitable purposes, having regard to its objects and importance throughout India or throughout any one or more States; and

(b) any trust or institution, which is either wholly for public religious purposes or wholly for public religious and charitable purposes, having regard to the fact that it is administered and supervised in a manner to ensure that its income is properly applied for its objects,

for the purpose of grant of exemption from income-tax of the income of such fund, trust or institution.

However, for getting the exemption from income-tax, the fund, trust or institution will be subjected to the requirement of—

(a) making an application in the prescribed form and manner to the prescribed authority for the purpose of grant of such exemption, or continuance thereof;

(b) furnishing such documents (including audited annual accounts) or information which the Central Government may consider necessary in order to satisfy itself about the genuineness of the activities of the fund or trust or institution;

(c) applying its income, or accumulating it for application, wholly and exclusively to the objects for which it is established;

(d) not investing or depositing its funds (other than voluntary contributions received and maintained in the form of jewellery, furniture or any other article as the Board may, by notification in the Official Gazette, specify) for any period during the previous year otherwise than in any form or mode specified in sub-section (5) of section 11;

(e) disinvesting by the 30th day of March, 1990, all the investments made before the 1st day of April, 1989 otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11.

However, the grant of exemption from income-tax will not apply to any income in the nature of profits and gains of business unless the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business.

Further, the tax exemption granted to the fund or trust or institution notified in this behalf will relate to such assessment year or years, not exceeding three assessment years at any one time, as may be specified in the notification, including an assessment year or years which commenced before the date of issue of the notification.

Sub-clause (f) of this clause seeks to amend clause (23D).

The provisions of clause (23D) provide for exemption of income of a Mutual Fund set up by a public sector bank or a public financial institution, as may be specified by the Central Government, by notification in the Official Gazette and subject to certain conditions including the condition that at least 90 per cent. of the annual income of the said fund shall be distributed to the unit-holders.

Sub-clause (f) seeks to withdraw the condition relating to distribution of at least 90 per cent, of the annual income of the Mutual Fund amongst the unit-holders with effect from 1st day of April, 1988.

Clause 5 seeks to amend section 11 of the Income-tax Act providing exclusion of the income from property held for charitable or religious purposes from the total income of the previous year of the person in receipt of the income.

Sub-clause (a) (i) of this clause seeks to insert a new clause (d) in sub-section (1) of section 11 so as to exclude the corpus donations from the total income of the trust under section 11. This amendment is consequent to the amendment made by the Direct Tax Laws (Amendment) Act, 1987 in the definition of 'income' whereby corpus donations are included within the definition of 'income' of a wholly or partly charitable or religious trust. Since stipulation regarding expenditure to the extent of 75 per cent. of the income and accumulation to the extent of 25 per cent. thereof during the year as provided in clauses (a) and (b) of sub-section (1) of section 11 cannot be made applicable to corpus donations, the proposed amendment in section 11 has become necessary to exclude the corpus donations from the total income of the trust under section 11.

As a result of this amendment, the corpus donation will be included in the total income of the trust only if it loses the exemption of section 11.

Sub-clause (a) (ii) of this clause seeks to amend clause (2) of the *Explanation* to sub-section (1) of section 11 by omitting the references to sub-section (2) of section 139 and power of the Income-tax Officer to extend the time for filing of the return provided in that section. This amendment is consequential to the amendment made by the Direct Tax Laws (Amendment) Act, 1987 in section 139 of the Income-tax Act.

Sub-clause (b) of this clause seeks to amend sub-section (5) of section 11 so as to include public sector companies in the list of institutions where the investment or deposit can be made under that sub-section. It also proposes to enable the Central Government to prescribe any other form or mode of investment or deposit for the purpose of this sub-section.

Clause 6 seeks to amend section 32A of the Income-tax Act relating to investment allowance.

Sub-clause (a) (i) of the clause seeks to insert a new proviso to provide that in respect of a ship or an aircraft acquired or a machinery or plant installed after 31st March, 1988, deduction in respect of investment allowance shall be allowed at the rate of 20 per cent. of the cost thereof. Sub-clause (a) (ii) seeks to insert an *Explanation* to provide that for the purposes of investment allowance, the actual cost shall mean the actual cost of ship, aircraft, machinery or plant to the assessee as reduced by any amount which has been met out of the amount released from the Development Bank in accordance with sub-section (6) of section 32AB.

Sub-clause (b) seeks to amend sub-section (2) to provide that clauses (a) and (b) thereof shall not apply in relation to a new ship or new aircraft acquired or new machinery or new plant installed after 31st March, 1987, but before 1st April, 1988.

Sub-clause (c) seeks to amend sub-section (2C) relating to investment allowance in respect of new machinery or plant used to assist in control of pollution or protection of environment to provide that investment allowance at the rate of 35 per cent. shall be allowed only in respect of such machinery or plant installed before the 1st April, 1987.

Sub-clauses (d) and (e) seek to carry out amendments of a consequential nature.

Sub-clause (f) seeks to substitute existing sub-section (8B) by new sub-sections (8B) and (8C).

The new sub-section (8B) provides that notwithstanding anything contained in sub-section (8) or any notification issued thereunder the provisions of investment allowance will apply in respect of a ship or aircraft acquired or machinery or plant installed after 31st March, 1988, but before such date as the Central Government may, by notification in the Official Gazette, specify.

The new sub-section (8C) provides that where a deduction has been allowed in any assessment year in respect of investment allowance, no deduction shall be allowed to the assessee under section 32AB in respect of investment deposit account in the said assessment year and in the four immediately succeeding assessment years.

Clause 7 seeks to amend section 32AB of the Income-tax Act relating to investment deposit account by substituting sub-section (10) by a new sub-section.

The new sub-section (10) provides that where a deduction has been allowed to the assessee in respect of investment deposit account in any assessment year, no deduction shall be allowed to the assessee in respect

of investment allowance under sub-section (1) of section 32A in the said assessment year and in the four immediately succeeding assessment years.

Clause 8 seeks to amend clauses (ii) and (iii) of section 35 of the Income-tax Act [as it stood immediately prior to its omission by section 10 of the Direct Tax Laws (Amendment) Act, 1987] dealing with deduction from profits and gains of business or profession of expenditure on scientific research carried out by a scientific research association or a university, college or institution approved under those sub-clauses.

As a result of the amendment proposed, the prescribed authority, by notification in the Official Gazette, will approve,—

(a) scientific research associations, university, college or institution, for the purpose of section 35(1)(ii);

(b) a university, college or other institutions to be used for research in social science or statistics research related to the class of business carried on, for the purpose of section 35(1) (iii).

The amendment also proposes to make the following stipulations:—

(i) that the scientific research association, university, college or other institution referred to in clause (ii) or clause (iii) of this section shall make an application in the prescribed form and manner to the prescribed authority for the purpose of grant of approval, or continuance thereof under these clauses;

(ii) the prescribed authority may, before granting approval under clause (ii) or clause (iii), call for such documents (including audited annual accounts) or information from the scientific research association, etc., in order to satisfy itself about the genuineness of the activities of the research association, etc.;

(iii) notification issued by the prescribed authority under these clauses shall at one time, have effect for not more than three assessment years, including an assessment year or assessment years commencing before the date on which such notification is issued (as may be specified in the notification).

The above amendments will take effect from the 1st day of April, 1990 and will be relevant for assessment year 1990-91 and subsequent assessment years.

Clause 9 seeks to amend section 40 of the Income-tax Act relating to amounts not deductible.

Under the provisions of clause (b) of that section [as it stood immediately before its substitution by clause (ii) of section 13 of the Direct Tax Laws (Amendment) Act, 1987] any payment of interest, salary, bonus, commission or remuneration made by the firm to its partners is not allowed as a deduction in computing the income of the firm.

Under the proposed amendment, a new clause (ba) is being inserted to provide that any payment of interest, salary, bonus, commission or remuneration made by an association of persons or a body of individuals to its members will also not be allowed as a deduction in computing the

income of the association or body. *Explanations* 1 to 3 to the new clause are on the same lines as *Explanations* 1 to 3 in the existing clause (b).

Clause 10 seeks to amend section 44AC of the Income-tax Act by inserting a proviso to clause (a) of sub-section (1) thereof.

The new proviso provides that clause (a) relating to determination of profits in the trading of goods, in the nature of alchoholic liquor for human consumption (other than Indian made foreign liquor), at 40 per cent. of the purchase price, shall not apply where the goods are not obtained by way of auction and where the sale price of such goods to be sold by the buyer is fixed by or under any State Act.

Clause 11 seeks to amend sub-section (1) of section 64 of the Income-tax Act [as it stood immediately before its amendment by section 17 of the Direct Tax Laws (Amendment) Act, 1987] dealing with the circumstances under which the income of the spouse, minor child, etc., is included in the total income of the individual.

Under the existing provisions of clause (v) of that sub-section, income from assets transferred by an individual to his minor child (not being a married daughter) is clubbed with the income of the individual. Clause (vii) of that sub-section similarly deals with the assets transferred by an individual to any person or association of persons for the benefit of his spouse or minor child (not being a minor daughter).

Under the proposed amendment, sub-clause (a) seeks to omit the brackets and words "(not being a married daughter)", which qualify the term "minor child" used in the said clauses (v) and (vii) as the use of these words has become unnecessary.

The existing *Explanation* 3, below that sub-section applies to clauses (iv) and (v) only and clarifies that where the assets transferred by an individual to his spouse or his minor child are invested in any business, the income proportionate to the investment out of the transferred assets will be clubbed with the income of the transferor.

Under the proposed amendment sub-clause (b) seeks to substitute a new *Explanation* for the existing *Explanation* 3. The new *Explanation* applies to clause (vi) also relating to assets transferred by an individual to his son's wife or son's minor child and thus removes a lacuna in the existing provisions.

Clause 12 seeks to insert a new section 67A after section 67 of the Income-tax Act [as it stood immediately before its substitution by section 18 of the Direct Tax Laws (Amendment) Act, 1987], dealing with the method of computing a partner's share in the income of the firm.

The new section provides for the method of computing a member's share in the income of an association of persons or a body of individuals, wherein the shares of the members are determinate, in the same manner as provided for in sub-sections (1) to (3) of section 67 for computing a partner's share in a firm.

Clause 13 seeks to amend section 80C of the Income-tax Act relating to deduction in respect of life insurance premia, contributions to provident fund, etc.

Sub-clause (a) (i) of this clause seeks to remove the limit of Rs. 10,000 from clause (d) of sub-section (2) of this section in respect of contributions from employees participating in a recognised provident fund.

Sub-clause (a) (ii) of this clause seeks to amend clause (h) of sub-section (2) of this section so as to extend the benefit to a public sector company or a university established by law or a college affiliated to such university.

Sub-clause (b) of this clause seeks to amend sub-section (8) by inserting a new clause so as to clarify that the contribution to any fund shall not include any sums in repayment of loan taken from that fund.

Clause 14 seeks to amend section 80CC of the Income-tax Act relating to deduction in respect of investment in certain new shares.

The proposed amendment seeks to extend the benefit of deduction to investment in shares of hotels approved by the prescribed authority.

Clause 15 seeks to amend section 80HHC of the Income-tax Act relating to deduction in respect of profits from export business.

Sub-clause (a) seeks to amend sub-sections (1) and (1A) by substituting the words "whole of the income" by the word "profits" to remove certain doubts.

Sub-clause (b) seeks to amend sub-section (4) as the basis for calculating the deduction has been changed from "net foreign exchange realisation" to "export turnover".

Sub-clause (c) seeks to amend sub-section (4A) to substitute the word "income" by the word "profits" to remove certain doubts.

Sub-clause (d) seeks to omit the definition of "net foreign exchange realisation" from the *Explanation* as the same will not be required after the amendment to sub-section (4). Clauses (d) and (e) are accordingly being renumbered as clauses (c) and (d).

Clause 16 seeks to insert a new section 80HHD in the Income-tax Act.

Sub-section (1) of the new section provides that in computing the income of an assessee, being an Indian company or a person (other than a company) resident in India, engaged in the business of a hotel which is for the time being approved by the prescribed authority or of a travel agent, deduction will be allowed of a sum equal to the aggregate of—

(a) fifty per cent. of the profits derived by him from services provided to foreign tourists; and

(b) so much of the amount out of the remaining profits derived by it from services provided to foreign tourists, as is debited by the assessee in the profit and loss account and credited to a reserve account to be utilised by the assessee for the purposes of his business, in the manner laid down in sub-section (4).

Sub-section (2) of the new section provides that the provisions of new section shall apply only to services provided to foreign tourists the receipts in relation to which are received by the assessee in convertible foreign exchange.

Sub-section (3) of the new section provides that for the purposes of sub-section (1) the profit derived by the assessee from services provided to foreign tourists shall be,—

(a) in a case where the business carried on by the assessee consists exclusively of services provided to foreign tourists resulting in receipts in convertible foreign exchange, the profits of the business as computed under the head "Profits and gains of business or profession"; and

(b) in a case where the business of the assessee does not consist exclusively of services provided to foreign tourists resulting in receipts in convertible foreign exchange, the amount which bears to the profit of the business of the assessee the same proportion as the receipts in convertible foreign exchange on account of services provided to foreign tourists bear to the total receipts of the business carried on by the assessee.

Sub-section (4) provides that the amount credited by the assessee to the reserve account under clause (b) of sub-section (1) shall be utilised by the assessee before the expiry of a period of five years from the year in which the amount was credited for the following purposes:—

(i) construction of new hotels approved by the prescribed authority or expansion of facilities in existing hotels already so approved;

(ii) purchase of new cars and new coaches by travel agents;

(iii) purchase of sports equipments for mountaineering, trekking, golf, river-rafting and other sports in and on water;

(iv) construction of conference or convention centres;

(v) provision of such new facilities for the growth of Indian tourism as the Central Government may, by notification in the Official Gazette, specify for this purpose.

The proviso to the sub-section provides that where any of the aforesaid activities would result in creation of any asset owned by the assessee outside India, such asset should be created only after obtaining prior approval of the prescribed authority.

Sub-section (5) seeks to provide that where any amount credited to the reserve account has been utilised by the assessee for any purpose other than those referred to in sub-section (4), then the amount so utilised shall be deemed to be the profits of the assessee in the year of utilisation and shall be charged to tax accordingly. Similarly, where any amount credited to such reserve account has not been utilised in the manner specified in sub-section (4), the amount not so utilised shall be deemed to be the profits in the year immediately following the period of five years specified in sub-section (4) and shall be charged to tax accordingly.

Sub-section (6) provides that the deduction under sub-section (1) shall not be admissible unless the assessee furnishes in the prescribed form along with the return of income the report of an accountant certifying that the deduction has been correctly claimed on the basis of the

amount of convertible foreign exchange received by the assessee in respect of services provided by him to foreign tourists. For this purpose accountant will be a person defined in *Explanation* below sub-section (2) of section 288.

Clause (a) of the *Explanation* defines travel agent to mean a travel agent or any other person, not being an airline or a shipping company, who holds a valid licence granted by the Reserve Bank of India under section 32 of the Foreign Exchange Regulation Act, 1973.

Clause (b) of the *Explanation* provides that for the purposes of this section, "convertible foreign exchange" shall have the meaning assigned to it in clause (a) of the *Explanation* to section 80HHC.

Clause (c) of the *Explanation* provides that "services provided to foreign tourists" shall not include any services provided by way of sale in any shop owned or managed by any person who carries on the business of a hotel or of a travel agent.

Clause 17 seeks to amend section 86 of the Income-tax Act [as it stood immediately before its substitution by section 29 of the Direct Tax Laws (Amendment) Act, 1987] relating to shares of partners in the income of an unregistered firm or the shares of members of an association of persons or a body of individuals in the income of the association or body.

Under the existing provisions of clause (v) of that section, income-tax shall not be payable in respect of share of a member in the income of the association of persons or body of individuals on which income-tax has already been paid by the association or body, although the share shall form part of the total income of the member.

Under the proposed amendment, clause (v) of that section is being substituted by a new clause which provides that income-tax shall not be payable in respect of share of a member in the income of the association of persons or body of individuals, computed in the manner provided in section 67A.

The first proviso to that section lays down that where the association or the body is chargeable to tax at the maximum marginal rate or any higher rate, the share of the member shall not be included in his total income at all. The second proviso lays down that where no income-tax is chargeable on the total income of the association or the body, the share of the member therein shall be chargeable to tax as part of his total income.

Clause 18 seeks to amend section 115A of the Income-tax Act.

Sub-clauses (i) and (ii) seek to insert clauses (ab) and (ib) in sub-section (1). The new clauses seek to provide that where the total income of a foreign company includes any income by way of income received in respect of the units of a Mutual Fund specified under clause (23D) of section 10, purchased by the foreign company in foreign currency, income-tax on income from such units shall be calculated at the rate of twenty-five per cent of such income.

Sub-clause (iii) seeks to carry out an amendment of consequential nature omitting clause (b) of the *Explanation* to section 115A defining the term "foreign company" and relettering clause (bb) as clause (b).

Clause 19 seeks to amend section 115J of the Income-tax Act.

Sub-clause (a) seeks to amend sub-section (1) to provide that the provisions of the sub-section relating to taxability of thirty per cent. of the book profits of certain companies shall not apply in the case of an assessee engaged in the business of generation or distribution of electricity.

Sub-clause (b) seeks to amend the *Explanation* to provide that for the computation of book profits, the net profit shall be increased by—

(i) any amount withdrawn from the reserve account under section 80HHD that has been utilised for any purpose other than those referred to in sub-section (4) of that section;

(ii) the amount credited to the reserve account under section 80HHD to the extent that amount has not been utilised within the period specified in sub-section (4) of that section,

if the said amounts have not been credited to the profit and loss account.

Item (vi) of sub-clause (b) seeks to amend the *Explanation* to provide that for the computation of the book profits the net profit shall be reduced by the amount of net profits derived from the business of exports or from services provided to foreign tourists by approved hotels or travel agents, which are eligible for deduction under section 80HHC or 80HHD, as the case may be. For this purpose, the net profits shall be computed in the same manner as specified in sub-section (3) of section 80HHC or sub-section (3) of section 80HHD, as the case may be.

Clause 20 seeks to amend section 139 of the Income-tax Act [as amended by section 42 of the Direct Tax Laws (Amendment) Act, 1987] relating to return of income. The amendments are proposed in sub-section (4A) and clause (d) of the proviso to sub-section (10) of this section, relating to the provisions for filing of returns by charitable or religious trusts or institutions governed under section 11 of the Income-tax Act. These amendments seek to bring back the provisions as they stood before the amendments made by the Direct Tax Laws (Amendment) Act, 1987, and are consequential to the revival of the provisions of sections 11 to 13 of the Income-tax Act and omission of section 80F of the Income-tax Act.

Clause 21 seeks to amend section 143 of the Income-tax Act relating to procedure for assessment, as substituted by section 48 of the Direct Tax Laws (Amendment) Act, 1987.

Under the provisions of clause (a) of sub-section (1) of new section 143, where a return has been filed under section 139 or under sub-section (1) of section 142—

(i) if any tax or interest is found due on the basis of such return, an intimation shall be sent to the assessee specifying the sum so payable and such intimation shall be deemed to be a notice of demand issued under section 156; and

(ii) if any refund is due on the basis of such return, it shall be granted to the assessee.

The proviso to the said clause enables the Department to make certain adjustments in the returned income or loss.

Sub-clause (a) seeks to insert a further proviso in the said clause to provide that an intimation for any tax or interest due under this clause shall not be sent after the expiry of two years from the end of the assessment year in which the income was first assessable.

Sub-clause (b) seeks to insert a new sub-section (1A) which provides for—

(a) levy of an additional income-tax of an amount equal to twenty per cent of the tax payable on the amount of difference between the total income determined under sub-section (1) of this section and the total income declared in the return;

(b) increase or decrease of the amount of additional income-tax as a consequence of an increase or decrease in the amount on which additional income-tax is payable by reason of a rectification order passed under section 154 or appellate order under section 250 or section 254 or section 260 or section 262 or section 264 or a revisionary order under section 263.

Clause 22 seeks to amend section 144A relating to power of Deputy Commissioner to issue directions in certain cases. As a result of the amendment in the *Explanation* to that section for the word "sub-section" the word "section" is proposed to be substituted. This is consequent to the omission of sub-section (2) in this section by the Direct Tax Laws (Amendment) Act, 1987.

Clause 23 seeks to amend section 147 of the Income-tax Act relating to income escaping assessment.

Under the provisions of new section 147, as substituted by section 54 of the Direct Tax Laws (Amendment) Act, 1987, the Assessing Officer is empowered to assess or re-assess income which has escaped assessment for any assessment year, after recording reasons for doing so.

Under the proposed amendment, the words "for reasons to be recorded by him in writing, is of the opinion" are being replaced by the expression "has reasons to believe", which occurred in section 147 before its amendment by the Direct Tax Laws (Amendment) Act, 1987.

Clause 24 seeks to amend section 148 of the Income-tax Act relating to issue of a notice where income has escaped assessment.

Under the provisions of new section 148, as substituted by section 54 of the Direct Tax Laws (Amendment) Act, 1987, the Assessing Officer, before making the assessment, re-assessment or recomputation of income under section 147, shall serve on the assessee, a notice requiring him to furnish the return of income within such period, not being less than thirty days as may be specified in the notice.

Under the proposed amendment, sub-section (2) is being inserted to provide that before issuing a notice, the Assessing Officer shall record his reasons for doing so.

Clause 25 seeks to amend clause (b) of sub-section (4A) of section 155 of the Income-tax Act in consequence of insertion of a proviso in sub-section (1) of section 32A vide clause 6.

Clause 26 seeks to substitute the existing sub-heading "DD-Association of persons—special cases" by a new sub-heading "DD—Association persons and body of individuals" in Chapter XV of the Income-tax Act.

Clause 27 seeks to omit section 167A of the Income-tax Act [as it stood immediately before its substitution by section 66 of the Direct Tax Laws (Amendment) Act, 1987] relating to charge of tax in the case of association of persons wherein the shares of the members are indeterminate or unknown at the maximum marginal rate.

Clause 28 seeks to insert a new section 167B in the Income-tax Act.

Sub-section (1) of that section provides that where the individual shares of the members of an association or a body in the whole or any part of the income of such association or body are indeterminate or unknown, tax shall be charged on the total income of the association or body at the maximum marginal rate. However, where the total income of any member of such association or body is chargeable to tax at a rate which is higher than the maximum marginal rate, tax shall be charged on the total income of the association or body at such higher rate.

Sub-section (2) of that section provides that where the total income of any member of an association of persons or body of individuals referred to in sub-section (1) for the previous year (excluding his share from such association or body) exceeds the maximum amount which is not chargeable to tax in the case of that member, tax shall be charged on the total income of the association or body at the maximum marginal rate. However, where any member or members of such association or body is or are chargeable to tax for the previous year at a rate or rates which is or are higher than the maximum marginal rate, tax shall be charged on that portion or portions of the total income of the association or body which is or are relatable to the share or shares of such member or members at such higher rate or rates, as the case may be, and the balance of the total income of the association or body shall be taxed at the maximum marginal rate.

Explanation to that section specifies the circumstances in which shares of the members of an association or body in the whole or any part of the income of such association or body shall be deemed to be indeterminate or unknown.

Clause 29 seeks to amend sub-section (1) of section 190 of the Income-tax Act. It is proposed to provide that in spite of the fact that regular assessment is to be made in a later assessment year, tax on income shall also be payable by way of collection at source in accordance with the provisions of section 206C.

Clause 30 seeks to amend section 194A of the Income-tax Act relating to deduction of tax at source from interest other than interest on securities.

Section 73 of the Direct Tax Laws (Amendment) Act, 1987 had omitted with effect from 1-4-1988, clause (iv) of sub-section (3) of section 194A which provided that tax shall not be deducted at source from any interest credited or paid by a firm to its partners.

Under the proposed amendment, the said clause (iv) is being reinserted in the said sub-section (3) retrospectively with effect from 1-4-1988.

Clause 31 seeks to omit section 194E of the Income-tax Act [as inserted by section 74 of the Direct Tax Laws (Amendment) Act, 1987] relating to deduction of tax at source from interest, salary, bonus, commission or remuneration paid by a firm to its partners with effect from 1st day of April, 1988. Consequently, no tax shall be deducted at source from interest, salary, etc., paid by a firm to its partners.

Clause 32 seeks to substitute a new section for section 196A of the Income-tax Act.

Sub-section (1) of new section 196A seeks to provide that no deduction of tax shall be made from any income payable in respect of units of a Mutual Fund, specified under clause (23D) of section 10, to its unit holders being persons other than foreign companies.

Sub-section (2) of that section seeks to provide that where the unit holder is a foreign company, the person responsible for making the payment will, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or any other mode, whichever is earlier, deduct income-tax on the sum so paid, at the rate of twenty-five per cent.

These amendments will come into force on the date of assent.

Clause 33 seeks to amend sections 198, 199, 200, 202, 203, sub-section (1) of section 203A, section 205 and sub-section (5) of section 215 of the Income-tax Act so as to insert a reference to new section 196A being inserted vide clause 32.

Clause 34 seeks to amend section 206C of the Income-tax Act.

Sub-clause (a) seeks to amend sub-section (1) of the said section by substituting the words "Ten per cent." by the words "Five per cent." occurring in column (3) against item (iii) of the Table below that sub-section, thereby providing that in respect of timber obtained by any mode other than a forest lease, income-tax shall be collected at the rate of five per cent of the purchase price payable by the buyer.

The proposed amendment shall come into force retrospectively from the 1st June, 1988.

Clause (b) seeks to insert a new sub-section (5A) in the said section to provide that every person collecting tax in accordance with the provisions of section 206C, shall prepare half yearly returns for the period ending on the 30th September and 31st March in each financial year and deliver or cause to be delivered to the prescribed income-tax authority such returns in such form and verified in such manner and setting forth such particulars as may be prescribed in the rules.

Clause 35 seeks to amend sub-section (1) of section 209 of the Income-tax Act regarding computation of advance tax. It is proposed to provide in clause (d) of that sub-section that the income-tax calculated for the purposes of advance tax shall also be reduced by the amount of income-tax which would be collectible at source in accordance with sub-section (1) of section 206C.

The proposed amendment shall come into force retrospectively from the 1st June, 1988.

Clause 36 seeks to amend the provisions of sections 222, 223, 224, 225, 226, 228 and 228A of the Income-tax Act relating to tax recovery to give effect to change in designation of Income-tax Officer as "Assessing Officer" made by the Direct Tax Laws (Amendment) Act, 1987, with effect from 1-4-1988.

Clause 37 seeks to amend section 226 of the Income-tax Act [as amended by section 36 of the Direct Tax Laws (Amendment) Act, 1988] by inserting the words "or Tax Recovery Officer" after the words "Assessing Officer", wherever they occur, in sub-sections (2), (3), (4) and (5) of that section.

Clause 38 seeks to amend section 234A of the Income-tax Act as inserted by section 94 of the Direct Tax Laws (Amendment) Act, 1987.

The provisions of section 234A which provide for levy of mandatory interest for defualts in furnishing returns of income, are proposed to be amended so as to provide for charging of interest in respect of any default in furnishing return of income, on the amount of tax on the total income as determined under sub-section (1) of section 143 or on regular assessment after giving credit for any advance tax paid, tax deducted at source or tax collected at source.

A new *Explanation* 4 to sub-section (1) is proposed to be introduced to provide that for the purpose of computing the interest payable under section 140A, the tax on the total income as determined under sub-section (1) of section 143 or on regular assessment shall be deemed to be tax on total income as declared in the return. This is necessary to enable the tax payers to pay the amount of interest along with the tax under self-assessment as is required under section 140A.

Clause 39 seeks to amend section 234B of the Income-tax Act as inserted by section 94 of the Direct Tax Laws (Amendment) Act, 1987. The provisions of section 234B which provide for levy of mandatory interest for defaults in payment of advance tax, are proposed to be amended so as to provide for charging of interest in respect of any default in payment of advance tax on the amount of the tax on the total income as determined under sub-section (1) of section 143 or on regular assessment after giving credit for any advance tax paid, tax deducted at source or tax collected at source.

Further, *Explanation* 1 to sub-section (1) is substituted so as to provide that "assessed tax" would mean,—

(a) for the purpose of computing the interest payable under section 140A, the tax on total income as declared in the return as

reduced by an amount of tax deducted or collected at source in accordance with the provisions of Chapter XVII of the Income-tax Act;

(b) in any other case, the tax on the total income determined under sub-section (1) of section 143 or on regular assessment, as reduced by the amount of tax deducted or collected at source in accordance with the provisions of Chapter XVII of the Income-tax Act.

Sub-clause (a) (iii) seeks to substitute *Explanation* 3 by a new *Explanation* so as to provide that for the purposes of collecting interest under this section tax would not include the additional tax, if any, payable under section 143.

Sub-clauses (b) and (c) of this clause seek to amend sub-sections (2) and (3) so as to insert reference to the determination of total income under sub-section (1) of section 143. *Explanation* to sub-section (3) is also proposed to be omitted.

Clause 40 seeks to amend section 234C.

An assessee is required to pay advance-tax in three instalments on its estimated total income including capital gain and income arising from winnings from lotteries, horse races, etc. The provisions of section 234C provide for levy of mandatory interest for deferment in payment of advance tax. Numerous representations received pointed out hardship on account of inability to estimate correctly the expected income from capital gain, or winnings from lotteries, horse races, etc., which are of casual nature. In order to remove this unintended hardship, the provisions of section 234C are being amended to provide that no interest will be levied in respect of any shortfall in the payment of advance tax due on the returned income if—

(i) the shortfall is on account of underestimate or failure to estimate the amount of capital gains or income of the nature referred to in sub-clause (ix) of clause (24) of section 2; and

(ii) the assessee has paid the whole of the amount of tax payable in respect of such income, as part of the instalment of advance tax which is immediately due.

Clause 41 seeks to amend section 244A of the Income-tax Act [as inserted by section 98 of the Direct Tax Laws (Amendment) Act, 1987].

Sub-clause (a) seeks to amend sub-section (1) so as to enable the assessee to claim interest on refund due to it also in pursuance of the determination of total income under sub-section (1) of section 143.

Further, clause (a) of sub-section (1) is proposed to be amended so as to include the tax collected at source under section 206C also for calculation of interest on the refund due to the assessee.

Sub-section (3) is being amended to include the reference of the order passed under sub-section (3) of section 143 for the purposes of calculation of interest under this sub-section.

Clause 42 seeks to omit the words "or applications" in the sub-heading to Chapter XX of the Income-tax Act consequents on the omission of section 246A.

Clause 43 seeks to amend section 246 of the Income-tax Act [as substituted by section 99 of the Direct Tax Laws (Amendment) Act, 1987] relating to appealable orders.

Under clauses (g) and (h) of sub-section (1) of section 246, any assessee may appeal against an order of the Assessing Officer (other than the Deputy Commissioner) under various sub-sections of section 185 refusing to grant registration of renewal of registration to the firm or under section 186 cancelling the registration of the firm in respect of the assessment year 1988-89 or any earlier assessment year.

Under the proposed amendment by sub-clause (a) (i), the words limiting the appeals under these clauses up-to the assessment year 1988-89 are being omitted. Consequently, appeals under these clauses can now be filed even in respect of the subsequent assessment years.

Sub-clause (a) (ii) seeks to amend clause (l) of sub-section (1) by providing appeal to the Deputy Commissioner (Appeals) against the Orders passed by the Assessing Officer also under section 272AA and section 272BB.

This sub-clause omits the reference of sub-section (1) of section 271 in sub-clause (iii) of clause (l) of sub-section (1) of this section consequent on amendment made in section 271.

Sub-clause (b) of this clause seeks to amend sub-section (2) providing appeal to the Commissioner (Appeals) against the order passed under section 104 in respect of assessment year 1987-88 or earlier years, against an order made by Deputy Commissioner imposing a penalty under section 272AA, and against an order imposing a penalty under Chapter XXI by the Income-tax Officer or the Assistant Commissioner with the previous approval of the Deputy Commissioner.

Clause 44 seeks to omit section 246A [as inserted by section 99 of the Direct Tax Laws (Amendment) Act, 1987] relating to application by the assessee before the Deputy Commissioner (Appeals) or Commissioner (Appeals) for an advance ruling in certain cases.

Clause 45 seeks to amend the proviso to sub-section (4) of section 249 providing forms of appeal and limitation. As a result of the amendment the discretion of appellate authority under sub-section (4) has been limited to the case where no return has been filed by the assessee and the assessee has not paid an amount equal to the amount of advance tax which was payable by him, before the filing of the appeal.

Clause 46 seeks to amend section 253 of the Income-tax Act providing appeals to the Appellate Tribunal. The amendment in clause (a) of sub-section (1) of this section is consequent on the omission of sub-section (2) of section 131 by the Direct Tax Laws (Amendment) Act, 1987. The amendment in clause (c) of sub-section (1) provides an appeal against an order passed by Chief Commissioner or Director General or Director under section 272A.

Clause 47 seeks to amend section 255 of the Income-tax Act relating to procedure of Appellate Tribunal.

Under the existing provisions of sub-section (3) of that section, a Single Member Bench of the Tribunal may hear appeals pertaining to an assessee whose total income as computed by the Assessing Officer in the case does not exceed forty thousand rupees.

Under the proposed amendment the monetary limit of forty thousand rupees is being raised to one lakh rupees.

Clause 48 seeks to amend clause (b) of section 269A providing definition of the competent authority under Chapter XX-A relating to acquisition of immovable properties in certain cases of transfer to counter-act evasion of tax.

As a result of the amendment made by the Direct Tax Laws (Amendment) Act, 1987 with effect from 1st day of April, 1988 in the designation of "income-tax authorities", the Assistant Commissioners of Income-tax have been re-designated as Deputy Commissioners of Income-tax. Consequently, the amendment is proposed in the definition of competent authority with effect from 1-4-1988 to mean a Deputy Commissioner of Income-tax authorised by the Central Government under section 269B to perform the functions of a competent authority under Chapter XX-A.

Clause 49 seeks to amend clause (a) of sub-section (1) of section 269B dealing with jurisdiction and functions of the competent authority under Chapter XX-A relating to acquisition of immovable properties in certain cases of transfer to counter-act evasion of tax.

As a result of the amendment made by the Direct Tax Laws (Amendment) Act, 1987 with effect from 1st day of April, 1988 in the designation of "income-tax authorities", the Assistant Commissioners of Income-tax have been redesignated as "Deputy Commissioners of Income-tax". Consequently, the amendment is proposed in section 269B to provide that Central Government may, by general or special order in the Official Gazette, authorise the Deputy Commissioners of Income-tax to perform the functions of a competent authority under Chapter XX-A.

Clause 50 seeks to amend section 271 [as it stood immediately before its amendment by section 106 of the Direct Tax Laws (Amendment) Act, 1987] providing for imposition of penalty for failure to furnish returns, comply with notices, concealment of income, etc. The clause seeks to carry out the following amendments in this section:—

(a) the provisions relating to imposition of penalty for failure to furnish returns are being deleted in view of the provisions for levy of mandatory interest under section 234A;

(b) the amount of penalty imposable for failure to comply with notices under sub-section (1) of section 142 or sub-section (2) of section 143 or failure to comply with a direction issued under sub-section (2A) of section 142 is now being revised to a minimum amount of one thousand rupees and up to a maximum amount of twenty-five thousand rupees for each such failure. The amount of penalty which was earlier imposable was a minimum amount of ten per cent. and up to a maximum amount of fifty per cent. of the amount of tax, if any, which would have been avoided if the income returned by such person had been accepted as the correct income;

(c) *Explanation* 3 of sub-section (1) has been amended so as to bring the references to the various provisions of the Act in line with the provisions as amended by the Direct Tax Laws (Amendment) Act, 1987;

(d) a new *Explanation* 6 is being introduced to provide that penalty for concealment of income shall not be imposed on so much of the income on which additional income-tax has been charged under the new sub-section (1A) of section 143;

(e) a new sub-section (5) is being inserted to provide for a transitory provision so as to levy penalty in assessment year 1988-89 and any earlier assessment year in accordance with the provisions of section 271 as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1988.

Clause 51 seeks to amend section 273A [as amended by section 113 of the Direct Tax Laws (Amendment) Act, 1987] dealing with the power to reduce or waive penalty, etc., in certain cases.

The clause seeks to carry out consequential amendments in this section as a result of—

(a) the deletion of the provisions relating to levy of penalty for failure to furnish returns;

(b) the amendments made in sections 139(8), 215, 217 and 273 by the Direct Tax Laws (Amendment) Act, 1987; and

(c) the amendments made in the penalty provisions under section 271 by clause 50.

Clause 52 seeks to amend clause (a) of section 275 of the Income-tax Act relating to bar on limitation for imposing penalties, as substituted by section 116 of the Direct Tax Laws (Amendment) Act, 1987. Under the proposed amendment, the orders of the Deputy Commissioner (Appeals) are also being included for the purpose of calculating the limitation period.

Clause 53 seeks to insert a new section 279B in the Income-tax Act to provide for production of evidence in prosecution for offences under Chapter XXII of the Act.

The new section provides that entries in the records or other documents in the custody of an income-tax authority shall be admitted in evidence during proceedings for the prosecution of any person for an offence under Chapter XXII of the Act, and all such entries may be proved either by the production of such records or other documents or by production of a copy of entries certified by the income-tax authority, having custody of such records or other documents, under its signature and stating that it is a true copy of the original entries which are contained in the records or other documents in its custody.

Clause 54 seeks to amend Second Schedule to the Income-tax Act [as it stood immediately before its amendment by the Direct Tax Laws (Amendment) Act, 1987] by substituting the words "Assessing Officer" wherever they occur, for the words "Income-tax Officer" with effect from the 1st day of April, 1988.

As a result of this amendment in this Schedule, the words "Tax Recovery Officer" are proposed to be substituted for the words "Assessing Officer" by making suitable amendments in the rules in the said Schedule.

Clause 55 seeks to amend the Third Schedule to the Income-tax Act [as it stood immediately before its amendment by the Direct Tax Laws (Amendment) Act, 1987] by substituting the words "Assessing Officer" for the words "Income-tax Officer" with effect from the 1st day of April, 1988.

As a result of this amendment in this Schedule, the words "or Tax Recovery Officer" are proposed to be inserted after the words "Assessing Officer".

Clause 56 seeks to amend the Tenth Schedule to the Income-tax Act, as inserted by section 125 of the Direct Tax Laws (Amendment) Act, 1987.

The said Schedule provides special provisions applicable in cases where the previous year in relation to the assessment year commencing on the 1st day of April, 1989 (hereinafter referred to as the transitional previous year), exceeds a period of twelve months.

The proposed amendments to rule 1 of the Schedule, which defines the term "transitional previous year", are of consequential nature following the amendments made in sub-section (2) of section 3 of the Income-tax Act.

Under the existing provisions of rule 3 of the Schedule, the amounts mentioned in various sections of the Act, which are enumerated in a Table given in the rule will be proportionately increased during the extended transitional previous year.

The proposed amendments to rule 3 are as follows:—

(a) two new provisos are being inserted in the said rule to provide that:—

(i) the amount of Rs. 10,000/- mentioned in column (2) of the Table against section 48(2) shall be increased during the transitional previous year only where the long-term capital gain arises as a result of two or more transfers of long-term capital assets and out of these, at least one transfer is made during the initial period of twelve months and the remaining transfer or transfers is or are made beyond the said period of twelve months comprised within the transitional previous year.

(ii) where more than one period in respect of different sources of income are included in the transitional previous year under the first proviso or the third proviso to section 3(2), the amounts mentioned in column (2) of the aforesaid Table shall be increased to such extent and in such manner as the Board may prescribe having regard to the length of the period or periods included in the transitional previous year in respect of different sources of income, the length of the transitional previous year and other relevant factors.

(b) a new Table is being substituted for the existing Table. The amount or amounts mentioned in sections 12A(b), 13(2)(g), 13(3)(b), the proviso to section 16(i), section 16(ii), proviso to section 24(2), sections 33A, 35A, 35AB, 35D, 40A(12), 80C(3), 80C(7)(c), 80CC(2), 80CCA(1), 80D(1), 80P(2)(c) and 80P(2)(f) of the Act, which are also proposed to be increased proportionately during the extended transitional previous year, are being included in the new Table. Opportunity has also been taken to correct some references to sections or amounts as also to enhance the amounts mentioned against section 16(i) and 2nd proviso to section 80L(1) consequent to the amendments made by the Finance Act, 1988 in those sections.

Rule 4 provides that where the transitional previous year consists of a period of eighteen months or more, than the number of days specified in sub-section (1) of section 6 for determining the residential status of an individual, namely, 182 days and 90 days shall be increased to 273 days and 135 days, respectively.

Under the proposed amendment, the new rule 4 provides that the time limit of 60 days mentioned in sub-section (1) of section 6 of the Act will also be increased to 90 days where the extended previous year comprises of a period of 18 months or more.

Rule 5 provides that where in a transitional previous year the assessee's income under the head "Profits and gains of business or profession" is included in the total income for a period of thirteen months or more the depreciation allowance under clause (ii) of sub-section (1) of section 32 will be proportionately increased.

Under the proposed amendments, the new rule 5 provides that increased depreciation will also be available in those cases where depreciation is allowable under the provisions of section 57(ii) while computing income under the head "Income from other sources", and that depreciation will be allowable on "block of assets" instead of "building, machinery, plant or furniture". The proviso in new rule 5 provides that where more than one period in respect of income under the head "Profits and gains of business or profession" or under the head "Income from other sources" are included in the transitional previous year under the first proviso or the third proviso to section 3(2), the depreciation allowance under section 32(1)(ii) on block of assets shall be calculated separately for each such period included in the transitional previous year and the said allowance shall be increased, where necessary, by multiplying it by a fraction of which the numerator is the number of months in such period (after excluding the number of months relatable to the period in relation to which depreciation on block of assets has been allowed or is allowable in the previous year relevant to the assessment year commencing on the 1st day of April, 1988) and the denominator is twelve.

Rule 6 provides that tax will be payable on the total income of the transitional previous year at the average rate of tax applicable to the proportionate income of twelve months.

Under the proposed amendment, a proviso is being inserted to provide that where more than one period in respect of different sources of income are included in the transitional previous year under the first

proviso or the third proviso to section 3(2), then the tax shall be chargeable at the average rate of tax, calculated in accordance with the provisions of this rule, on the total income of the transitional previous year after excluding from such total income the income relatable to any such period or periods, which has already been included or is includible in the total income of the previous year or previous years relevant to the assessment year 1988-89.

Clause 57 makes amendments of a consequential nature in certain provisions of the Income-tax Act.

Clause 58 seeks to amend section 2 of the Wealth-tax Act by inserting a new *Explanation* 2 in clause (m) after the existing *Explanation*, in order to clarify that the debt mentioned in sub-clause (ii) in respect of an asset exempt either wholly or partly under section 5(1A) shall be limited to the value of the exemption which the said asset will get under the said section 5(1A).

Clause 59 seeks to amend section 4 of the Wealth-tax Act dealing with the inclusion of certain deemed assets in the net wealth.

Sub-clause (a) of this clause seeks to amend sub-section (1) which contains two clauses (a) and (b). Clause (a) deals with assets transferred by an individual to his or her spouse, minor children etc. Clause (b) deals with value of interest in a firm or association of persons of an assessee who is a partner in the firm or a member of the association of persons.

The opening words of sub-section (1) have led to the interpretation that the sub-section is applicable only to cases of assessees who are individuals.

The proposed amendments by sub-clause (a) seek to clarify that clause (a) of sub-section (1) applies to an individual and clause (b) would be applicable to any assessee. The revised clause (b) of sub-section (1) also specifies that the value of the interest of the assessee in the firm or association of persons shall be determined in the manner laid down in new Schedule III. The proviso to new clause (b) also includes the interest of a minor child in a firm or association of persons in the net wealth of the parent having a higher net wealth.

Sub-clause (b) of this clause seeks to omit sub-section (2) as rules 15 and 16 of new Schedule III now provide the manner in which the value of the interest of a person in a firm of which he is a partner or in an association of persons of which he is a member is to be determined.

Clause 60 seeks to amend section 5 of the Wealth-tax Act.

Sub-clause (a) seeks to insert a new clause (xvig) in sub-section (1). The new clause seeks to provide that in computing the net wealth of an individual who is a non-resident Indian during the year ending on the valuation date or of a nominee or survivor of such individual or of any other individual receiving by way of gift from such individual, any investment made in the bonds specified under sub-clause (iid) of clause (15) of section 10 of the Income-tax Act, shall not form part of such net wealth.

The proviso to the clause seeks to provide that where an individual who is a non-resident Indian during the year ending on the valuation date in which such bond is acquired, subsequently becomes a resident in India, the clause shall continue to apply in relation to such individual.

The *Explanation* seeks to provide that for the purposes of this clause an individual shall be deemed to be a non-resident Indian during the year ending on the valuation date if in respect of that year the individual is a non-resident Indian within the meanings of clause (e) of section 115C of the Income-tax Act.

Sub-clause (b) seeks to insert an *Explanation* at the end of sub-section (1A) in order to provide that where a debt is secured or has been incurred in relation to any asset referred to in this sub-section, the exemption under this sub-section shall be allowed first against the value of the asset on which or in relation to which such debt is secured or incurred and, thereafter, against the value of any other asset so referred to.

Sub-clause (c) seeks to insert a new sub-section (4) in order to provide that where the assessee is a partner of a firm or a member of the association of persons and the firm or the association owns any one or more of the assets which are exempt under sub-section (1), then his interest in the firm or association shall be deemed to include the value of a part of each of such asset of the firm or the association in the same proportion in which he is entitled to share the profits of the firm or the association and the assessment shall be made after allowing the exemption under sub-section (1) in respect of those assets on the basis of this proportionate value.

Clause 61 seeks to amend section 6 of the Wealth-tax Act. *Explanation* 1A to section 6 which refers to clause (4A) of section 10 of the Income-tax Act is being amended as the said clause (4A) has been renumbered as sub-clause (ii) of clause (4) of the said section 10 by the Direct Tax Laws (Amendment) Act, 1987.

Clause 62 seeks to substitute a new section in the Wealth-tax Act for the existing section 7 relating to the determination of the value of assets.

As per the existing provisions, the value of any asset, other than cash, for the purpose of this Act is to be taken as the price which it would fetch if sold in the open market on the valuation date. It further provides that where the taxpayer is carrying on a business for which regular accounts are maintained, the Wealth-tax Officer may determine the net value of the assets of the business as a whole on the valuation date instead of determining separately the value of each asset held by him in the business, and may make such adjustments as prescribed in the rules.

The substituted section 7 now seeks to do away with the above method of valuation. Under the new section the value of any asset, other than cash, on the valuation date is to be determined in the manner laid down in Schedule III of this Act.

However, sub-section (2) of the new section gives option to the assessee in the case of a house belonging to him and exclusively used by him for residential purpose to opt the value determined in the manner laid down in Schedule III of this Act, as on the valuation date next following date on which he becomes the owner of the hours, or the value determined for the valuation date relevant to the assessment year commencing on the 1st day of April, 1971, whichever valuation date is later.

Proviso to this sub-section seeks to restrict the above option only to one residential house if more than one house belonging to the assessee are exclusively used by him for residential purposes.

Explanation to this sub-section seeks to clarify that where the house constructed by the assessee, he shall be deemed to have become the owner thereof on the date on which the construction of such house was completed. It also seeks to clarify that a part of house being an independent residential unit shall be taken as a house.

Clause 63 seeks to amend section 11 of the Wealth-tax Act [as substituted by section 131 of the Direct Tax Laws (Amendment) Act, 1987] so as to substitute the reference to sub-section "(5)" occurring in sub-section (2) of that section by a reference to sub-section "(4)".

Clause 64 seeks to amend section 16 of the Wealth-tax Act [as substituted by section 138 of the Direct Tax Laws (Amendment) Act, 1987] relating to procedure for assessment.

The amendments proposed by sub-clauses (a) and (b) are on the lines of amendments proposed in section 143 of the Income-tax Act *vide* clause 21.

Clause 65 seeks to amend section 16A of the Wealth-tax Act relating to reference to Valuation Officer.

The proposed amendment provides that where under the provisions of section 7 read with the rules made under this Act or the rules in new Schedule III, the market value of any asset is to be taken into account in making an assessment, the Assessing Officer may refer the valuation of such asset to the Valuation Officer.

Clause 66 seeks to amend sub-section (1) of section 17 of the Wealth-tax Act relating to wealth escaping assessment.

Under the provisions of new sub-section (1), as substituted by clause (a) of section 139 of the Direct Tax Laws (Amendment) Act, 1987, the Assessing Officer is empowered to assess or re-assess the net wealth which has escaped assessment for any assessment year, after recording reasons for doing so.

The proposed amendments in sub-section (1) are on the lines of similar amendments made in sections 147 and 148 of the Income-tax Act *vide* clauses 23 and 24.

Clause 67 seeks to amend section 17B of the Wealth-tax Act [as inserted by section 141 of the Direct Tax Laws (Amendment) Act, 1987]

on the same lines as amendments made in section 234A of the Income-tax Act *vide* clause 38.

Clause 68 seeks to amend section 18 of the Wealth-tax Act on the same lines as amendments made in section 271 of the Income-tax Act *vide* clause 50.

Clause 69 seeks to substitute section 18A of the Wealth-tax Act [as it stood immediately before its substitution by section 142 of the Direct Tax Laws (Amendment) Act, 1987] by a new section so as to bring the provisions of this section on the same lines as those of section 272A of the Income-tax Act substituted by section 110 of the Direct Tax Laws (Amendment) Act, 1987.

Clause 70 seeks to amend section 18B of the Wealth-tax Act on the same lines as the amendments made in section 273A of the Income-tax Act *vide* clause 51.

Clause 71 seeks to amend section 23 of the Wealth-tax Act [as amended by section 146 of the Direct Tax Laws (Amendment) Act, 1987] providing for first appeal against the orders of the Assessing Officers. Amendment in sub-section (1), clause (d) is consequent to the amendment made in section 18. Amendment in clause (b) of sub-section (1A) provides appeal against the orders passed under sub-section (1) of section 18 with the previous approval of the Deputy Commissioner as specified in sub-section (3) of that section.

Clause 72 seeks to amend section 26 of the Wealth-tax Act providing appeal to the Appellate Tribunal against the orders passed by the Director General or Director under section 18A.

Clause 73 seeks to amend section 34A of the Wealth-tax Act.

Sub-clause (a) seeks to amend sub-section (1) so as to substitute the reference to "total income" by a reference to "net wealth" to rectify a factual error. The amendments proposed by sub-clause (b) are on the same lines as the amendments made in section 244A of the Income-tax Act *vide* clause 41.

Clause 74 seeks to amend section 35 of the Wealth-tax Act so as to omit the references to section 23A in clause (c) of sub-section (1).

Clause 75 seeks to insert a new section 36 in the Wealth-tax Act to provide for production of evidence in prosecution for offences under the Act.

The provisions of the new section are on the same lines as those of new section 279B inserted in the Income-tax Act *vide* clause 53.

Clause 76 seeks to amend section 41 of the Wealth-tax Act relating to service of notice. In view of levy of wealth-tax on companies, sub-section (2) is proposed to be amended to clarify that in the case of companies, the notice or requisition referred to in the section be addressed to the principal officer of such companies.

Clause 77 seeks to amend section 42A of the Wealth-tax Act relating to publication of information respecting assessees.

In view of levy of Wealth-tax on companies, the proposed *Explanation* seeks to clarify that in the case of a company, the names of the directors, secretaries and treasurers, or managers of the company, may also be published if, in the opinion of the Central Government, the circumstances of the case justify it.

Clause 78 seeks to insert a new Schedule III in the Wealth-tax Act to provide rules for determining value of assets.

Schedule III contains Parts A to H:—

1. Part A is of general nature.

Rule 1 in this part provides that the value of any asset, other than cash, for the purposes of the Wealth-tax Act, shall be determined in the manner laid down in rules 2 to 21.

Rule 2 lays down definitions of various terms appearing in these rules.

2. Part B contains rules 3 to 8 which provide the manner in which the value of any immovable property, being a building or land appurtenant thereto, or part thereof, is to be determined.

The provisions of these rules are on the same lines as those of the existing rule 1BB in the Wealth-tax Rules, 1957, subject to the following modifications, namely:—

(i) these rules will be used for valuation of residential as well as commercial properties Thus the word "house" wherever appears in rule 1BB has been substituted by the words "immovable property";

(ii) rule 3 provides that the value of any immovable property being a building or land appurtment thereto, or part thereof, shall be the amount arrived at by multiplying the net maintainable rent by the figure 12.5 in all cases except where the property is constructed on leasehold land.

(iii) proviso to rule 3 provides that in the case of a property constructed on a leasehold land the figure 12.5 mentioned above shall be substituted by the figure 10 if the unexpired period of the lease of such land is 50 years or more, and by the figure 8 if the unexpired period of the lease is less than 50 years.

It has further been provided that if the property is acquired or constructed after the 31st day of March, 1974, then the value arrived at as per the aforesaid provision shall not be less than the cost of acquisition or the cost of construction as increased by the cost of any improvements in the property;

(iv) rule 4 deals with the method of computing the "net maintainable rent" for the purpose of rule 3. This has amended suitably sub-rule 2(c) of the existing rule 1BB. Under the amended provision the net maintainable rent is to be computed after deducting from the "gross maintainable rent" the amount of taxes levied by any local authority in respect of property and a sum equal to 15 per cent. of the gross maintainable rent;

(v) rule 5 provides method of computing gross maintainable rent for the purpose of rule 4. This has amended the provisions of existing sub-rule (2) (a) of rule 1BB. In this rule gross maintainable rent means—

(a) where the property is let out the amount received or receivable by the owner as annual rent or annual value assessed by the local authority, whichever is higher;

(b) where the property is not let out, the amount of annual rent assessed by the local authority or if the property is not situated in the jurisdiction of any local authority, the amount which the owner can reasonably be expected to receive as annual rent.

Explanations to this rule define the words "the annual rent" and "rent received or receivable". In the case of a property let out throughout the year the annual rent would mean the actual rent received or receivable by the owner in that year. If the property is let out for part of the year, the annual rent will be determined proportionately. In cases where the land-lord receives a benefit from the tenant by way of municipal taxes borne wholly or partly by the tenant, the "annual rent" will be increased by the amount so borne by the tenant. Where the tenant bears the expenditure on repairs "the annual rent" shall be increased by one-ninth. Where the owner has accepted any deposit (not being advance rent for a period of three months or less) the annual rent shall be increased by 15 per cent. of such deposit per annum less the interest payable by the owner to the tenant. Where the owner has received any amount by way of premium or otherwise for leasing the property the annual rent will be increased by the amount obtained by dividing the premium by the number of years of the period of lease. "Rent received or receivable" shall include all payments for the use of a property by whatever name called. the value of all benefits or perquisites, whether convertible into money or not, obtained from the tenant or occupier by the owner;

(vi) rule 6 and 7 provide for adjustments to the value arrived at under rule 3 for unbuilt area of plot of land. and adjustment for unearned increase in the value of the land respectively. These are on the lines of the existing sub-rules (3) and (4) of rule 1BB.

(vii) Rule 8 mentions the cases where provisions of rule 3 are not to apply. Provisions of this rule are on the lines of sub-rule (5) of the existing rule 1BB except that the requirement of having to obtain the prior approval of the Inspecting Assistant Commissioner in the matter of valuation in such cases has been dispensed with as a result of laying down the guideline in rule 20.

3. Part C contains rules 9 to 13 which provide the manner in which the value of shares in or debentures of companies are to be determined.

(a) Rule 9 provides for the valuation of quoted shares and debentures of companies. It provides that the value of a quoted equity or preference share in any company or a quoted debenture shall be taken as the value quoted in respect of such share or debenture on the valuation date, or where there no such quotation on the valuation date, the quotation on the immediately preceding date closest to the valuation date.

(b) Rule 10 provides for the valuation of unquoted preference shares. The provisions of this rule are on the same lines as those of the existing rule 1C of the Wealth-tax Rules, 1957 except that the words "market value" have been substituted by the word "value".

(c) Rule 11 provides for the valuation of unquoted equity shares in companies other than investment companies. The provisions of this rule are on the same lines as those of the existing rule 1D of the Wealth-tax Rules, 1957 subject to the following modifications, namely:—

(i) the words "market value" is substituted by the word "value";

(ii) the value is determined in all cases at 80 per cent. of the break-up value irrespective of the number of years for which dividend has not been declared.

(d) Rule 12 provides for the valuation of unquoted equity shares in investment companies. Sub-rule (2) of this rule provides the manner by which the value of such shares will be determined. The provisions of this sub-rule are on the same lines as in sub-rules (1) and (2) of the existing rule 1E of the Wealth-tax Rules, 1957.

Sub-rule (3) clarifies that the value of an asset disclosed in the balance-sheet of the company shall be taken to be the value determined in accordance with the rules as applicable thereto and, in the absence of any such rule, the value of such asset shall be its value as determined under rule 20, *i.e.*, the price it would fetch in the open market if sold on the valuation date.

Sub-rule (4) clarifies that the words "balance-sheet" in this rule shall have the same meaning as in rule 11, and the amounts referred to in sub-rule (3) of rule 11 shall not be treated as assets. These amounts are specified in *Explanation* II to the existing rule 1D.

For the purpose of facilitating the valuation under this rule, sub-rule (5) provides that the company concerned shall have such valuation made by its auditors appointed under section 224 of the Companies Act, 1956, and a certificate of the auditors relating to such valuation in the prescribed form shall be furnished to the Assessing Officer in the case of the company. It further provides that the valuation made by the auditors shall be taken into account in the assessments of the shareholders of the company.

(e) Rule 13 provides for the valuation of unquoted equity shares in inter-locked companies. *Explanation* to this rule clarifies that inter-locked companies in this rule mean any two investment companies holding shares in each other.

Sub-rule (1) provides that the value of an unquoted equity share in one of the two inter-locked companies held by the other inter-locked company for the purposes of rule 12 shall be the higher of the paid-up value of such share or the value determined under sub-rule (2).

Sub-rule (2) provides the mode of determining the value of such share which is mentioned below:

(i) The value of equity share for this rule = $\frac{\text{Aggregate value of all the equity shares}}{\text{Number of equity shares}}$

(ii) The aggregate value of all the equity shares shall be:

(a) in a case where 51 per cent. or more of the gross total income of the company consists of the income chargeable under the head "Income from house property", equal to the maintainable profits of such company x 100|85

(b) in the case of any other inter-locked company, equal to maintainable profits x 100|10

(iii) Sub-rule (3) provides the manner in which the "maintainable profits" of the company for the above purpose shall be computed.

4. Part D contains rule 14 which provides the manner in which the net value of the assets of the business as a whole, having regard to the balance-sheet of such business, is to be determined.

Sub-rule (2) provides the manner in which various adjustments are to be made in the value of assets and liabilities in the balance-sheet for the purpose of this rule.

5. Part E contains rules 15 and 16 which provide the manner in which the value of the interest of a person in a firm of which he is a partner or in an association of persons of which he is a member, is to be determined.

Rule 16 provides the computation of net wealth of the firm or an association of persons and its allocation amongst the partners or members. The provisions of this rule are on the same lines as those of the existing sub-rule (1) of rule 2 of the Wealth-tax Rules, 1957.

A proviso has been added in rule 16 to provide that in determining the net wealth for the purpose of this rule, no account shall be taken of the exemptions in sub-sections (1) and (1A) of section 5.

Explanation to this rule seeks to provide that:

(a) where the net wealth of the firm on association computed in accordance with this rule includes the value of any

assets located outside India, the value of the interest of any partner or member in the assets located in India shall be determined having regard to the proportion which the value of assets located in India diminished by the debts relating to those assets bears to the net wealth of the firm or association. These provisions are contained in the existing sub-rule (2) of rule 2 of the Wealth-tax Rules, 1957.

(b) where the net wealth of the firm or association, computed in accordance with this rule includes the value of any assets which are exempt from inclusion in the net wealth under sub-sections (1) and (1A) of section 5, the value of the interest of a partner or member shall be deemed to include the value of his proportionate share in the said assets and, the provisions of sub-sections (1) and (1A) of section 5 shall apply to him accordingly;

(c) where the net wealth of the firm or association computed in accordance with this rule includes the value of any assets referred to in sub-section (2) of section 5, the value of the interest of a partner or member shall be deemed to include the value of his proportionate share in the said assets, and the provisions of sub-section (2) of section 5 shall apply to him accordingly. These provisions are contained in existing sub-rule (3) of rule 2 of the Wealth-tax Rules, 1957.

6. Part F contains rule 17 which provides the manner in which the value of life interest of an assessee is to be determined.

The provisions of this rule are on the same lines as those of the existing rule 1B of the Wealth-tax Rules, 1957.

7. Part G contains rules 18 and 19 which provide the manner in which valuation of jewellery is to be determined.

Clause (a) of rule 18 provides that in a case where the value of jewellery declared by the assessee is Rs. 5 lakhs or less, the value declared will be accepted provided information in the prescribed form is furnished by the assessee.

Clause (b) of rule 18 provides that in a case where the value of jewellery declared is more than Rs. 5 lakhs, the valuation will be based on the value estimated by the valuation officer on a reference under section 16A of the Wealth-tax Act.

Rule 19 provides that the value of jewellery determined under clause (b) of rule 18 for any assessment year (hereinafter referred to as the first assessment year) shall be taken to be the value of such jewellery for the subsequent four assessment years subject to the adjustments provided in clauses (a) and (b):—

(a) where the jewellery includes gold or silver or any alloy containing gold or silver, the market value of such gold or silver or such alloy on the valuation date relevant to the concerned subsequent assessment year shall be substituted

for the market value of such gold or silver or alloy on the valuation date relevant to the first assessment year;

(b) where any jewellery or part of jewellery is sold or otherwise disposed of by the assessee or any jewellery or part of jewellery is acquired by him, on or before the valuation date relevant to the concerned subsequent year, the value of the jewellery determined for the post-assessment year shall be reduced or increased, as the case may be, and the value as so reduced or increased shall be the value of the jewellery for such subsequent assessment year.

8. Part H contains rules 20 and 21 which provide that the value of any asset, other than cash, being an asset which is not covered by rules 3 to 19, shall be estimated either by the assessing officer himself or by the valuation officer if reference is made to him under section 16A. This rule further provides that in both these cases, the value shall be estimated to be the price which it would fetch if sold in the open market on the valuation date. Sub-rule (3) provides that in the case of assets not saleable in the open market, value shall be determined in accordance with guidelines or principles specified by the Board from time to time by general or special order.

Rule 21 provides that for the purposes of determining market value under any provision of this Schedule, the price or other consideration for which the property may be acquired by or transferred to any person under the terms of a deed of trust, or through or under any restrictive covenant in any instrument of transfer shall be ignored.

Clause 79 seeks to amend section 3 of the Gift-tax Act to make a consequential change so as to substitue the reference to "the Schedule" by "Schedule I" in view of renumbering of the existing Schedule as Schedule I.

Clause 80 seeks to amend section 5 of the Gift-tax Act by inserting clause (iiie) in sub-section (1).

The new clause seeks to provide that gifts made by an individual who is non-resident Indian to any relative of any property in the form of bonds specified under sub-clause (iid) of clause (15) of section 10 of the Income-tax Act shall be exempt from gift-tax.

The proviso to the new clause seeks to provide that where an individual who is a non-resident Indian in any previous year in which the bonds are acquired, becomes resident in any subsequent year, the clause shall apply in respect of the gifts of property in the form of such bonds made in such subsequent year or any year thereafter.

Explanation seeks to provide that for the purposes of this clause the expressions "relative" and "non-resident Indian" shall have the meanings assigned to them in clause (41) of section 2, and clause (e) of section 115C, of the Income-tax Act.

Clause 81 seeks to substitute a new section for section 6 of the Gift-tax Act dealing with the mode of determination of the value of gifts.

Sub-section (1) of the new section provides that the value of any property, other than cash, transferred by way of gift shall, for the purpose of this Act, be its value as on the date on which the gift was made and shall be determined in the manner laid down in Schedule II. Schedule II provides that the valuation is to be made in accordance with the provisions of Schedule III to the Wealth-tax Act.

Sub-section (2) of the new section provides that in respect of a gift not revocable for a specified period, the value of property gifted shall be the capitalised value of the income from such property during the period for which the gift is not revocable.

Clause 82 seeks to amend section 10 of the Gift-tax Act [as substituted by section 164 of the Direct Tax Laws (Amendment) Act, 1987] so as to substitute the reference to sub-section "(5)" occurring in sub-section (2) of that section by a reference to sub-section "(4)".

Clause 83 seeks to amend section 15 of the Gift-tax Act [as substituted by section 170 of the Direct Tax Laws (Amendment) Act, 1987].

The amendments proposed by sub-clauses (a) and (b) are on the lines of amendments made in section 143 of the Income-tax Act *vide* clause 21.

Sub-clause (c) seeks to amend sub-section (6) to provide that where under the provisions of section 6 read with new Schedule II, the fair market value of any property transferred by way of gift is to be taken into account in making an assessment, the Assessing Officer may refer the valuation of such property to the Valuation Officer. The amendment is on the lines of section 16A of the Wealth-tax Act.

Clause 84 seeks to amend sub-section (1) of section 16 of the Gift-tax Act relating to gift escaping assessment.

Under the provisions of new sub-section (1) [as substituted by clause (a) of section 171 of the Direct Tax Laws (Amendment) Act, 1987], the Assessing Officer is empowered to assess or re-assess the taxable gift which has escaped assessment for any assessment year, after recording reasons for doing so.

The proposed amendments in sub-section (1) are on the lines of similar amendments made in sections 147 and 148 of the Income-tax Act *vide* clauses 23 and 24.

Clause 85 seeks to amend section 16B of the Gift-tax Act [as inserted by section 173 of the Direct Tax Laws (Amendment) Act, 1987] on the same lines as amendments made in section 234A of the Income-tax Act *vide* clause 38.

Clause 86 seeks to amend section 17 of the Gift-tax Act on the same lines as amendments made in section 271 of the Income-tax Act *vide* clause 50.

Clause 87 seeks to substitute section 17A of the Gift-tax Act [as it stood immediately before its substitution by section 174 of the Direct Tax Laws (Amendment) Act, 1987] by a new section so as to make the

provisions of this section on the same lines as those of section 272A of the Income-tax Act [as substituted by section 110 of the Direct Tax Laws (Amendment) Act, 1987].

Clause 88 seeks to amend section 22 of the Gift-tax Act [as amended by section 176 of the Direct Tax Laws (Amendment) Act, 1987] providing first appeal against the orders passed by the Assessing Officers. Amendment in sub-section (1), clause (d) is consequent to the amendment made in section 17. Amendment in clause (c) of sub-section (1A) provides appeal against the orders passed under sub-section (1) of section 17 with the previous approval of the Deputy Commissioner as specified in sub-section (3) of that section.

Clause 89 seeks to amend section 25 of the Gift-tax Act providing appeal to the Appellate Tribunal against the order passed by the Director General or Director under section 17A.

Clause 90 seeks to amend section 33A of the Gift-tax Act.

The amendments proposed by sub-clauses (a) and (b) are on the lines of amendments proposed in section 34A of the Wealth-tax Act *vide* clause 73.

Clause 91 seeks to amend section 34 of the Gift-tax Act so as to omit the references to section 22A in clause (c) of sub-section (1).

Clause 92 seeks to insert a new section 35E in the Gift-tax Act to provide for production of evidence in prosecution for offences under the Act.

The provisions of the new section are on the same lines as those of new section 279B inserted in the Income-tax Act *vide* clause 53.

Clause 93 seeks to amend section 45 of the Gift-tax Act mentioning certain cases in which the provisions of the Gift-tax Act are not applied. The amendment seeks to substitute a new *Explanation* for *Explanations* 1 and 2 [as they stood immediately before their substitution by section 184 of the Direct Tax Laws (Amendment) Act, 1987] so as to clarify that for the purpose of clause (b) the term "amalgamation" shall have the meaning assigned to it in clause (1B) of section 2 of the Income-tax Act.

Clause 94 seeks to amend the Gift-tax Act by inserting Schedule II which incorporates the rules for determining the value of the property gifted.

Schedule II provides that the value of any property other than cash transferred by way of gift shall be determined, for the purpose of this Act, in accordance with the provisions of Schedule III of the Wealth-tax Act, subject to the following modifications,—

(a) in rule 5 of Schedule III to the Wealth-tax Act, reference to the year ending on the valuation date shall be construed as a reference to the previous year. Except this, reference to the valuation date shall be construed as reference to the date on which the gift was made.

(b) references to sections 7 and 16A of the Wealth-tax Act shall be construed as references to section 6 and sub-section (6) of section 15 of this Act.

Clause 95 seeks to omit or amend various provisions of the Direct Tax Laws (Amendment) Act, 1987.

The clause seeks to omit clauses (p) and (s) of section 3, clauses (a), (k) and (l) of section 6, sections 7, 8, clause (a) of section 9, clause (ii) of section 13, 16, 17, 18, 19, 20, 21, 24, clauses (a), (b), (d) and (e) of section 25, 26, 29, clause (a) of section 61, 62, 63; clause (a) of section 64, 66, 67, 68, 69, 71, 72, clause (b) of section 88, 100, 101, 106, 122, clause (3), sub-clause (i) of clause (5), clauses (6), (8), (9), (10), (11), (13), (14), (16), (19) and (22) of section 124, clauses (5), (8), (11), (13), (23) and (28) of section 126, sections 142, 143, 144, 147, clauses (1) and (2) of section 160, 174, 175, 177, clauses (c) and (d) of section 184 and clause (2) of section 186.

The clause also seeks to amend clause (r) of section 3, section 10, clause (c) of section 61, clause (b) of section 64, clauses (12) and (24) of section 124, clause (a) of section 149 and clause (a) of section 179.

The proposed amendments in various provisions of the Direct Tax Laws (Amendment) Act, 1987 will mainly have the following effect, namely:—

(i) to withdraw the amendments made in the Income-tax Act for introducing a new scheme of assessment of firms and partners and to restore the old provisions in this regard which existed immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987;

(ii) to withdraw the amendment made in clause (ii) of sub-section (1) of section 64 of the Income-tax Act restricting the inapplicability of that clause to professional firms only and to revive the old provisions of that clause as they existed immediately before the amendment by the Direct Tax Laws (Amendment) Act, 1987;

(iii) to withdraw the amendments made in the Income-tax Act for introducing a new scheme of assessment of charitable or religious trusts, institutions or funds and to restore the old provisions in this regard and also the provisions of sections 35, 35CCA and 35CCB relating to the deductions on account of scientific research, rural development programmes and programmes of conservation of natural resources which existed immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987;

(iv) to withdraw the provisions relating to levy of additional income-tax, wealth-tax and gift-tax and advance ruling in the Income-tax Act, Wealth-tax Act and Gift-tax Act and to restore the old penal provisions in this regard in the said Acts which existed immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987;

(v) to substitute the words "Assessing Officer" for the words "Income-tax Officer" on account of the changes in the designations made by the Direct Tax Laws (Amendment) Act, 1987 with effect from 1-4-1988 in the Second and Third Schedules of the Income-tax Act.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 4 of the Bill seeks to amend section 10 of the Income-tax Act. Sub-clause (a) of clause 4 seeks to insert clause (6C) which empowers the Central Government to specify a foreign company whose income, by way of fees for technical services received in pursuance of an agreement with the Central Government for providing services in projects connected with security of India, will be exempt. Sub-clause (b) seeks to insert sub-clause (iid) in clause (15). The new sub-clause empowers the Central Government to specify bonds which are purchased by a non-resident Indian in foreign exchange, the interest whereon arising to a non-resident Indian, etc., will be exempt. Sub-clause (d) seeks to substitute a new clause for clause (23). The new clause empowers the Central Government to notify an association or institution which has as its object the control, supervision, regulation or encouragement in India of the games of cricket, hockey, football, tennis or such other games as the Central Government may specify. The income of such association or institution will, on such notification being issued, be exempted. The form in which the association has to make an application and the authority to whom the application is to be made will be prescribed by rules. Clause (b) of the third proviso to clause (23) also empowers the Central Board of Direct Taxes to notify certain articles received in the form of voluntary contribution which need not be invested or deposited under that clause. Clause (e) seeks to amend clause (23C) so as to substitute new sub-clauses for sub-clauses (iv) and (v). New sub-clause (iv) empowers the Central Government to notify any fund or institution established for charitable purposes which has importance throughout India or throughout any State or States and new sub-clause (v) empowers the Central Government to notify any trust or institution established wholly for public religious purposes or wholly for public religious and charitable purposes. The income received by any person on behalf of the said fund, institution or trust will stand exempted on such notification being issued. Under the first proviso to the said sub-clauses, the form of application and the authority to which application is to be made are required to be prescribed by rules.

2. Clause 5 of the Bill seeks to amend section 11 of the Income-tax Act. Sub-clause (b) (ii) seeks to insert clause (xii) in sub-section (5) of section 11 which enables the Central Government to prescribe any other form or mode of investment or deposit by rules made in this behalf.

3. Clause 6 of the Bill seeks to amend section 32A of the Income-tax Act. Sub-clause (f) proposes to substitute new sub-sections for sub-section (8B). New sub-section (8B) empowers the Central Government to specify a date after which the provisions of section 32A shall cease to apply in respect of a ship or aircraft acquired or any machinery or plant installed.

4. Clause 8 of the Bill seeks to amend section 35 of the Income-tax Act. Sub-clause (c) proposes to insert three provisos in sub-section (1) of section 35. Under the first proviso the form of application and the

authority to which the application shall be made by the scientific research association, university, college or other institution are required to be prescribed by rules.

5. Clause 14 of the Bill seeks to insert a new sub-clause (iii) in clause (a) of sub-section (3) of section 80CC of the Income-tax Act. Under the said sub-clause the authority by which a hotel is to be approved is required to be prescribed by rules.

6. Clause 16 of the Bill seeks to insert a new section 80HHD in the Income-tax Act. Under the provisions of sub-section (1) and clause (a) of sub-section (4) of the said section, the authority by which hotels are to be approved, is to be prescribed by rules. Under clause (e) of sub-section (4), the Central Government is empowered to specify by notification new facilities for the growth of Indian tourism for the purposes of section 80HHD.

7. Clause 20 of the Bill seeks to amend section 139 of the Income-tax Act. Sub-clause (a) seeks to substitute a new sub-section for sub-section (4A). Under new sub-section (4A), the form in which return of income is to be made, the manner in which the return is to be verified and certain other particulars to be included in the return are required to be prescribed by rules.

8. Clause 34 of the Bill seeks to amend section 206C of the Income-tax Act. Sub-clause (b) proposes to insert a new sub-section (5A) under the said sub-section. The form in which half-yearly returns are to be delivered, the income-tax authority to which such returns are to be delivered, the manner of verification of such returns and the time within which such returns are to be delivered are required to be prescribed by rules.

9. Clause 56 of the Bill seeks to amend the Tenth Schedule to the Income-tax Act. Sub-clause (ii) (a) proposes to insert two new provisos after the existing proviso in rule 3. Under the new third proviso, the Central Board of Direct Taxes has power to make rules so as to increase the amount or amounts specified in column (2) of the Table under rule 3, to such extent and in such manner as may be prescribed in the rules having regard to the factors specified in the said proviso.

10. Clause 78 of the Bill seeks to insert a new Schedule III in the Wealth-tax Act, laying down rules for determining the value of assets. The Explanation to sub-rule (9) of rule 2 of the said Schedule requires the form of certificate to be furnished by the stock exchange to be prescribed by rules. Sub-rule (3) of rule 20 of the said Schedule empowers the Central Board of Direct Taxes to specify guidelines or principles by general or special order for determining the value of any asset where the value of any such asset cannot be estimated under rule 20 because the same is not saleable in the open market.

11. The matters in respect of which the notifications may be issued by the Central Government or the Central Board of Direct Taxes or in respect of which the rules may be made by the Central Board of Direct Taxes under section 295 of the Income-tax Act and section 46 of the Wealth-tax Act, are matters of administrative details and it is not possible to include them in the Bill. Under the circumstances the delegation of legislative power is, therefore, of a normal character.

BILL No. 129 OF 1988

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Sixty-second Amendment) Act, 1988. **Short title.**

2. In article 326 of the Constitution, for the words "twenty-one years", the words "eighteen years" shall be substituted. Amendment of article 326.

STATEMENT OF OBJECTS AND REASONS

Article 326 of the Constitution provides that the elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage, that is to say, a person should not be less than 21 years of age. It has been found that many of the countries have specified 18 years as the voting age. In our country some of the State Governments have adopted 18 years of age for elections to the local authorities. The present-day youth are literate and enlightened. Lowering of voting age would provide to the unrepresented youth of the country an opportunity to give vent to their feelings and help them become a part of the political process. The present-day youth are very much politically conscious. It is, therefore, proposed to reduce the voting age from 21 years to 18 years.

NEW DELHI; B. SHANKARANAND.

The 9th December, 1988.

FINANCIAL MEMORANDUM

Clause 2 of the Bill seeks to amend article 326 of the Constitution to reduce the voting age from 21 years to 18 years. It is estimated that as a result of this reduction in voting age, the number of votes will be increased by 47 million. If the Bill is enacted and brought into operation, the electoral rolls have to be revised to include all those persons who are between the age of 18 and 21 years. It is not possible to precisely estimate for expenditure involved in the revision of electoral rolls. On a modest estimate given by the Election Commission, it is estimated that this would come to anywhere between rupees 1 crore and 1.50 crores. Some more expenditure is also likely to be involved in the conduct of elections, in the form of printing of additional ballot papers, the establishment of more number of polling stations, etc. It is not possible to precisely estimate the expenditure that would be incurred on this account.

The Bill, if enacted and brought into operation, would not involve any other expenditure, either recurring or non-recurring.

BILL NO. 128 OF 1988

A Bill further to amend the Representation of the People Act, 1950 and the Representation of the People Act, 1951.

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and commencement.

1. (*1*) This Act may be called the Representation of the People (Amendment) Act, 1988.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

CHAPTER II

AMENDMENT OF THE REPRESENTATION OF THE PEOPLE ACT, 1950

Amendment of Act 43 of 1950.

2. In Part IIA of the Representation of the People Act, 1950, after section 13C, the following section shall be inserted, namely:—

Chief Electoral Officers, District Election Officers, etc., deemed to be on deputation to Election Commission.

"13CC. The officers referred to in this Part and any other officer or staff employed in connection with the preparation, revision and correction of the electoral rolls for, and the conduct of, all elections shall be deemed to be on deputation to the Election Commission for the period during which they are so employed and such officers and staff shall, during that period, be subject to the control, superintendence and discipline of the Election Commission.".

CHAPTER III

AMENDMENTS OF THE REPRESENTATION OF THE PEOPLE ACT, 1951

Amendment of section 2.

3. In section 2 of the Representation of the People Act, 1951 (hereafter in this Chapter referred to as the principal Act), after clause (*e*), the following clause shall be inserted, namely:— 43 of 1951.

'(*f*) "political party" means an association or a body of individual citizens of India registered with the Election Commission as a political party under section 29A;'.

Amendment of section 8.

4. In section 8 of the principal Act,—

(*a*) for sub-sections (*1*) and (*2*), the following sub-sections shall be substituted, namely:—

'(*1*) A person convicted of an offence punishable under—

(*a*) section 153A (offence of promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony) or section 171E (offence of bribery) or section 171F (offence of undue influence or personation at an election) or sub-section (*1*) or sub-section (*2*) of section 376 or section 376A or section 376B or section 376C or section 376D (offences relating to rape) or section 498A (offence of cruelty towards a woman by husband or relative of a husband) or sub-section (*2*) or sub-section (*3*) of section 505 (offence of making statement creating or promoting enmity, hatred or ill-will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) of the Indian Penal Code; or 45 of 1860.

(*b*) the Protection of Civil Rights Act, 1955 which provides for punishment for the preaching and practice of "untouchability", and for the enforcement of any disability arising therefrom; or 22 of 1955.

(*c*) section 11 (offence of importing or exporting prohibited goods) of the Customs Act, 1962; or 52 of 1962.

(*d*) sections 10 to 12 (offence of being a member of an association declared unlawful, offence relating to dealing with funds of an unlawful association, offence relating to contravention of an order made in respect of a notified place) of the Unlawful Activities (Prevention) Act, 1967; or

37 of 1967.

46 of 1973.

(*e*) the Foreign Exchange (Regulation) Act, 1973; or

(*f*) the Narcotic Drugs and Psychotropic Substances Act, 1985; or

61 of 1985.

(*g*) section 3 (offence of committing terrorist acts) or section 4 (offence of committing disruptive activities) of the Terrorist and Disruptive Activities (Prevention) Act, 1987; or

28 of 1987.

(*h*) section 125 (offence of promoting enmity between classes in connection with the election) or section 135 (offence of removal of ballot papers from polling stations) or section 135A (offence of booth capturing) or clause (*a*) of sub-section (*2*) of section 136 (offence of fraudulently defacing or fraudulently destroying any nomination paper) of this Act,

shall be disqualified for a period of six years from the date of such conviction.

(*2*) A person convicted for the contravention of—

(*a*) any law providing for the prevention of hoarding or profiteering; or

(*b*) any law relating to the adulteration of food or drugs; or

28 of 1961.

(*c*) any provisions of the Dowry Prohibition Act, 1961; or

3 of 1988.

(*d*) any provisions of the Commission of Sati (Prevention) Act, 1987,

and sentenced to imprisonment for not less than six months, shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(*3*) A person convicted of any offence and sentenced to imprisonment for not less than two years [other than any offence referred to in sub-section (*1*) or sub-section (*2*)] shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.';

(*b*) sub-section (*3*) shall be renumbered as sub-section (*4*) thereof, and in sub-section (*4*) as so renumbered, for the words, brackets and figures "in sub-section (*1*) and sub-section (*2*)", the words, brackets and figures "in sub-section (*1*), sub-section (*2*) or sub-section (*3*)" shall be substituted.

Insertion of new section 28A.

5. After section 28 of the principal Act, the following section shall be inserted, namely:—

Returning officer, presiding officer, etc., deemed to be on deputation to Election Commission.

"28A. The returning officer, assistant returning officer, presiding officer, polling officer and any other officer appointed under this Part, and any police officer designated for the time being by the State Government, for the conduct of any election shall be deemed to be on deputation to the Election Commission for the period commencing on and from the date of the notification calling for such election and ending with the date of declaration of the results of such election and accordingly, such officers shall, during that period, be subject to the control, superintendence and discipline of the Election Commission.".

Insertion of new Part IVA.

6. After Part IV of the principal Act, the following Part shall be inserted, namely:—

"PART IVA

REGISTRATION OF POLITICAL PARTIES

Registration with the Commission of associations and bodies as political parties.

29A. (*1*) Any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of this Part shall make an application to the Election Commission for its registration as a political party for the purposes of this Act.

(*2*) Every such application shall be made,—

(*a*) if the association or body is in existence at the commencement of the Representation of the People (Amendment) Act, 1988, within sixty days next following such commencement;

(*b*) if the association or body is formed after such commencement, within thirty days next following the date of its formation.

(*3*) Every application under sub-section (*1*) shall be signed by the chief executive officer of the association or body (whether such chief executive officer is known as Secretary or by any other designation) and presented to the Secretary to the Commission or sent to such Secretary by registered post.

(*4*) Every such application shall contain the following particulars, namely:—

(*a*) the name of the association or body;

(*b*) the State in which its head office is situate;

(*c*) the address to which letters and other communications meant for it should be sent;

(*d*) the names of its president, secretary, treasurer and other office-bearers;

(*e*) the numerical strength of its members, and if there are categories of its members, the numerical strength in each category;

(*f*) whether it has any local units; if so, at what levels;

(*g*) whether it is represented by any member or members in either House of Parliament or of any State Legislature; if so, the number of such member or members.

(5) The application under sub-section (*1*) shall be accompanied by a copy of the memorandum or rules and regulations of the association or body, by whatever name called, and such memorandum or rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, and would uphold the sovereignty, unity and integrity of India.

(6) The Commission may call for such other particulars as it may deem fit from the association or body.

(7) After considering all the particulars as aforesaid in its possession and any other necessary and relevant factors and after giving the representatives of the association or body reasonable opportunity of being heard, the Commission shall decide either to register the association or body as a political party for the purposes of this Part, or not so to register it; and the Commission shall communicate its decision to the association or body:

Provided that no association or body shall be registered as a political party under this sub-section unless the memorandum or rules and regulations of such association or body conform to the provisions of sub-section (5).

(8) The decision of the Commission shall be final.

(9) After an association or body has been registered as a political party as aforesaid, any change in its name, head office, office-bearers, address or in any other material matters shall be communicated to the Commission without delay.".

Amendment of section 33.

7. In section 33 of the principal Act, in sub-section (*1*), after the proviso, the following proviso shall be inserted, namely:—

'Provided further that in the case of a local authorities' constituency, graduates' constituency or teachers' constituency, the reference to "an elector of the constituency as proposer" shall be construed as a reference to "ten per cent. of the electors of the constituency or ten such electors, whichever is less, as proposers".'.

Amendment of section 39.

8. In section 39 of the principal Act, in sub-section (2), in the proviso, clause (*aa*) shall be relettered as clause (*ab*) thereof, and before clause (*ab*) as so relettered, the following clause shall be inserted, namely:—

'(*aa*) the reference in the opening paragraph of sub-section (*1*) of section 33 to "an elector of the constituency as proposer" shall be construed as a reference to "ten per cent. of the elected members or

of the members of the Legislative Assembly of a State or of the members of the electoral college of a Union territory, as the case may be, or ten members concerned, whichever is less, as proposers":

Provided that where as a result of the calculation of the percentage referred to in this clause, the number of members arrived at is a fraction and if the fraction so arrived at is more than one-half it shall be counted as one, and if the fraction so arrived at is less than one-half it shall be ignored;'.

Amendment of section 58.

9. In section 58 of the principal Act,—

(*a*) in sub-section (*1*), after clause (*a*), the following clause shall be inserted, namely:—

"(*aa*) any voting machine develops a mechanical failure during the course of the recording of votes; or";

(*b*) in sub-section (*2*), in clause (*b*), after the words "result of the election or that", the words "the mechanical failure of the voting machine or" shall be inserted.

Insertion of new section 58A.

10. After section 58 of the principal Act, the following section shall be inserted, namely:—

Adjournment of poll or countermanding of election on the ground of booth capturing.

'58A. (*1*) If at any election,—

(*a*) booth capturing has taken place at a polling station or at a place fixed for the poll (hereafter in this section referred to as a place) in such a manner that the result of the poll at that polling station or place cannot be ascertained; or

(*b*) booth capturing takes place in any place for counting of votes in such a manner that the result of the counting at that place cannot be ascertained,

the returning officer shall forthwith report the matter to the Election Commission.

(*2*) The Election Commission shall, on the receipt of a report from the returning officer under sub-section (*1*) and after taking all material circumstances into account, either—

(*a*) declare that the poll at that polling station or place be void, appoint a day, and fix the hours, for taking fresh poll at that polling station or place and notify the date so appointed and hours so fixed in such manner as it may deem fit; or

(*b*) if satisfied that in view of the large number of polling stations or place involved in booth capturing, the result of the election is likely to be affected, or that booth capturing had affected counting of votes in such a manner as to affect the result of the election, countermand the election in that constituency.

Explanation.—In this section, "booth capturing" shall have the same meaning as in section 135A.'.

Insertion of new section 61A.

11. After section 61 of the principal Act, the following section shall be inserted, namely:—

Voting machines at elections.

'61A. **Notwithstanding anything contained in this Act or the rules made thereunder, the giving and recording of votes by voting machines in such manner as may be prescribed, may be adopted in such constituency or constituencies as the Election Commission may, having regard to the circumstances of each case, specify.**

Explanation.—For the purpose of this section, "voting machine" means any machine or apparatus whether operated electronically or otherwise used for giving or recording of votes and any reference to a ballot box or ballot paper in this Act or the rules made thereunder shall, save as otherwise provided, be construed as including a refer ence to such voting machine wherever such voting machine is used at any election.'.

Amend. ment of section 77.

12. In section 77 of the principal Act, in sub-section (*1*), *Explanation* 2 shall be omitted.

Amend- ment of section 123.

13. In section 123 of the principal Act,—

(*a*) after clause (7), and before the *Explanation,* the following clause shall be inserted, namely:—

"(*8*) Booth capturing by a candidate or his agent or other person.";

(*b*) in the *Explanation,* after clause (*3*), the following clause shall be inserted, namely:—

'(*4*) For the purposes of clause (*8*), "booth capturing" shall have the same meaning as in section 135A.'.

Amend- ment of section 127.

14. In section 127 of the principal Act, in sub-section (1), for the words "shall be punishable with fine which may extend to two hundred and fifty rupees", the words "shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees, or with both" shall be substituted.

Insertion of new section 135A.

15. After section 135 of the principal Act, the following section shall be inserted, namely:—

'135A. Whoever commits an offence of booth capturing shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine, and where such offence is committed by a person in the service of the Government, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine.

Explanation.—For the purposes of this section, "booth capturing" includes, among other things, all or any of the following activities, namely:—

(*a*) seizure of a polling station or a place fixed for the poll by any person or persons, making polling authorities surrender the ballot papers or voting machines and doing of any other act which affects the orderly conduct of elections;

(*b*) taking possession of a polling station or a place fixed for the poll by any person or persons and allowing only his or their own supporters to exercise their right to vote and prevent others from voting;

(*c*) threatening any elector and preventing him from going to the polling station or a place fixed for the poll to cast his vote;

(*d*) seizure of a place for counting of votes by any person or persons, making the counting authorities surrender the ballot papers or voting machines and the doing of anything which affects the orderly counting of votes;

(*e*) doing by any person in the service of Government, of all or any of the aforesaid activities or aiding or conniving at, any such activity in the furtherance of the prospects of the election of a candidate.'.

Amendment of section 169.

16. In section 169 of the principal Act, in sub-section (2),—

(*i*) after clause (*e*), the following clause shall be inserted, namely:—

"(*ee*) the manner of giving and recording of votes by means of voting machines and the procedure as to voting to be followed at polling stations where such machines are used;";

(*ii*) after clause (*g*), the following clause shall be inserted, namely:—

"(*gg*) the procedure as to counting of votes recorded by means of voting machines;";

(*iii*) in clause (*h*), for the words "ballot boxes", the words "ballot boxes, voting machines" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The Election Law, so far as elections to the Parliament and State Legislatures are concerned, is contained in the Representation of the People Act, 1950 and the Representation of the People Act, 1951. The former deals with the matters pertaining to elections prior to the stage of actual elections and the latter deals with the actual conduct of elections and all matters connected herewith. These two Acts have been amended periodically in order to bring about improvements in the election system in the light of the experience gained in the working of these Acts.

2. Our election system has stood the test of time. Several rounds of elections and bye-elections have been held by the Election Commission and the poll has, on the whole, been free and fair. The people of India have also shown considerable maturity in exercising their right of franchise.

3. The question of introducing electoral reforms and making suitable changes in the election law to prevent the occurrence of corrupt practices, which vitiate the conduct of free and fair elections, have been under consideration for some time now. The experience gained over the years, also emphasises the need for further strengthening the measures for ensuring free and fair elections. The Election Commission has also forwarded several proposals for electoral reforms.

4. The various proposals for electoral reforms were widely debated. Government were keen to bring about necessary electoral reforms, consultations were held with the political parties in order to ascertain their specific views in the matter. Keeping in view the various suggestions, it has been decided to bring about amendments in the existing election laws.

5. The proposals contained in the present Bill are briefly explained below:—

(*i*) At present, all the work relating to the preparation, revision and correction of the electoral rolls and the actual conduct of elections, is carried out by the designated officers of the State Governments concerned. It is felt that the provisions of the Representation of the People Act, 1950 and the Representation of the People Act, 1951, in this regard should be clearly defined so that during the relevant period, these officers would, while discharging functions relating to elections, be under the control, superintendence and discipline of the Election Commission.

(*ii*) At present, there is no statutory definition of political party in the Election Law. The recognition of a political party and the allotment of symbols for each party are presently regulated under the Election Symbols (Reservation and Allotment Order, 1968. It is felt that the Election Law should define political party and lay

down the procedure for its registration. It is also felt that the political parties should be required to include a specific provision in the memorandum or rules or regulations governing their functioning that they would fully be committed to and abide by the principles enshrined in the preamble to the Constitution.

(*iii*) Section 8 of the Representation of the People Act, 1951, deals with disqualification on the ground of conviction for certain offences. It is proposed to include more offences in this section so as to prevent persons having criminal record enter into public life.

(*iv*) For the purpose of preventing frivolous candidates in respect of election to the Council of States and the Legislative Council of States, it is proposed to increase the number of proposers to ten per cent. of the total electorate or ten proposers, whichever is less.

(*v*) Technology has made very rapid strides thereby favourably affecting several fields of human activity and leading to betterment all round. It is felt that appropriate modern electronic processes should be deployed, side by side, with the existing conventional systems in the voting process. Since the Representation of the People Act, 1951 specifically makes mention only of the ballot paper system of voting, it is proposed to make suitable amendments in the Act in order to facilitate the use of electronic voting machines.

(*vi*) Booth capturing and rigging of elections had been on the increase in the recent past. This evil practice takes different forms, ranging from physical threat to the voter to forcible occupation of polling stations. A large part of our electorate consists of people who are poor and also belong to weaker sections of the society. It is, therefore, necessary to deal with this evil firmly. The Election Law, as it stands, does not contain any provisions to deal with this offence. It has, therefore, been proposed to include specific and penal provisions in the Representation of the People Act, 1951, to deal with this offence and to make it also as a corrupt practice.

(*vii*) The present penalty for disturbing election meetings is only a meagre fine of Rs. 250/-. It is proposed to modify this provision by providing for a term of imprisonment for three months and also enhance the quantum of the fine to Rs. 1,000/-.

(*viii*) The Bill also includes certain consequential amendments.

NEW DELHI;
The 9th December, 1988.

B. SHANKARANAND

FINANCIAL MEMORANDUM

Clause 11 of the Bill seeks to insert a new section in the Representation of the People Act, 1951, to facilitate the polling of votes by voting machines in addition to the existing ballot paper system.

2. If the Bill is enacted and brought into operation resulting in the introduction of the electronic voting machines, an additional expenditure from the Consolidated Fund of India is likely. It is proposed that the machines may be introduced in the first phase, in constituencies identified as sensitive by the Election Commission. Such constituencies may number about 150. The electronic voting machine is produced indigenously and as per present estimates each machine is likely to cost about Rs. 5,000. The total expenditure likely for introducing the electronic voting machines in all these sensitive constituencies would be of the order of Rs. 75 crores. If the electronic voting machines are to be introduced in all the polling stations of the country, then the total financial burden will be about Rs. 250 crores. The machines have a fairly long life of 13 to 20 years and may require only a negligible amount for annual maintenance.

3. The Bill if enacted and brought into operation would not involve any other expenditure either recurring or non-recurring.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 16 of the Bill seeks to amend section 169 of the Representation of the People Act, 1951 relating to powers of the Central Government to make rules. The additional matters being included in sub-section (2) of section 169 in relation to which rules may be made *inter alia* relate to the giving and recording of votes by means of voting machines and the procedure as to voting to be followed at polling stations where such machines will be used; the procedure as to counting of votes recorded by means of voting machines and the safe custody of the voting machines.

2. The matters in respect of which rules may be made are matters relating to procedure and detail and it may not be practicable to provide them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

SUBHASH C. KASHYAP,
Secretary-General.

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